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## LOK SABHA

The following Bills were introduced in Lok Sabha on the 1st May, 1959:—

\*BILL NO. 37 OF 1959

*A Bill further to amend the Companies Act, 1956*

BE it enacted by Parliament in the Tenth Year of the Republic of India as follows:—

1. This Act may be called the Companies (Amendment) Act, 1959. Short title.

1 of 1956. 5 2. In section 2 of the Companies Act, 1956 (hereinafter referred to as the principal Act),— Amendment of section 2.

(a) in clause (3), in sub-clause (c),—

(i) the word “and” at the end of paragraph (i) shall be omitted;

10 (ii) after paragraph (ii), the following paragraph shall be inserted, namely:—

“(iii) any subsidiary of the other body corporate referred to in paragraph (ii) above; and”;

(b) in clause (4), in sub-clause (b),—

15 (i) the word “and” at the end of paragraph (i) shall be omitted;

(ii) after paragraph (ii), the following paragraph shall be inserted, namely:—

20 “(iii) any subsidiary of the other body corporate referred to in paragraph (ii) above; and”;

\*The President has, in pursuance of clauses (1) and (3) of article 117 of the Constitution of India, recommended to Lok Sabha, the introduction and consideration of the Bill.

(c) in clause (7), for the words "does not include a corporation sole", the following words shall be substituted, namely:—

"does not include—

(a) a corporation sole;

(b) a co-operative society registered under any law relating to co-operative societies; and

(c) any other body corporate which the Central Government may, by notification in the Official Gazette, specify in this behalf;";

(d) for clause (9), the following clause shall be substituted, namely:—

'(9) "branch office" means—

(a) any establishment described as a branch by the company;

(b) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company; and

(c) any establishment engaged in any production, processing or manufacture,

but does not include any establishment specified in any order made by the Central Government under section 8;";

(e) for clause (11), the following clause shall be substituted, namely:—

'(11) "the Court" means,—

(a) with respect to any matter relating to a company (other than any offence against this Act), the Court having jurisdiction under this Act with respect to that matter relating to that company, as provided in section 10;

(b) with respect to any offence against this Act, the Court of a Magistrate of the First Class or, as the case may be, a Presidency Magistrate, having jurisdiction to try such offence;";

(f) in clause (26),—

(a) for the words "any powers of management", the words "substantial powers of management" shall be substituted;

(b) the following proviso shall be added at the end, namely:—

"Provided that a managing director of a company shall exercise his powers subject to the superintendence,

control and direction of its Board of directors;”;

(g) for clause (30), the following clause shall be substituted, namely:—

5 ‘(30) “officer” includes any director, managing agent, secretaries and treasurers, manager or secretary, and also includes—

(a) where the managing agent, the secretaries and treasurers or the secretary is or are a firm, any partner in the firm;

10 (b) where the managing agent or the secretaries and treasurers is or are a body corporate, any director or manager of the body corporate;

15 (c) where the secretary is a body corporate, any director, managing agent, secretaries and treasurers or manager of the body corporate;

but, save in sections 477, 478, 539, 543, 545, 621, 625 and 633 does not include an auditor;”;

20 (h) in clause (33), for the words, brackets and figures “sub-section (1) of section 549 and sub-section (3) of section 550” occurring at both the places, the words, brackets and figures “sub-section (3) of section 550, section 552 and sub-section (3) of section 555” shall be substituted;

25 (i) in clause (36), for the words “any prospectus,” the words “any document described or issued as a prospectus and includes any” shall be substituted;

(j) for clause (45), the following clause shall be substituted, namely:—

30 ‘(45) “secretary” means any individual, firm or body corporate appointed to perform the duties which may be performed by a secretary under this Act and any other purely ministerial or administrative duties;’.

3. In section 4 of the principal Act,—

(a) in sub-section (1), for clause (b), the following clause shall be substituted, namely:—

35 “(b) that other—

(i) where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of

Amendment  
of section 4.

equity shares, exercises or controls more than half of the total voting power of such company;

(ii) where the first-mentioned company is any other company, holds more than half the nominal value of its equity share capital; or”;

(b) in sub-section (2), for clause (c), the following clause shall be substituted, namely:—

“(c) that the directorship is held by an individual nominated by that other company or a subsidiary thereof.”;

(c) after sub-section (6), the following sub-section shall be inserted, namely:—

“(7) A private company, being a subsidiary of a body corporate incorporated outside India, which, if incorporated in India, would be a public company within the meaning of this Act, shall be deemed for the purposes of this Act to be a subsidiary of a public company if the entire share capital in that private company is not held by that body corporate.”.

Substitution  
of new sec-  
tion for sec-  
tion 6.

4. For section 6 of the principal Act, the following section shall be substituted, namely:—

Meaning of  
“relative”.

“6. Two persons shall be deemed to be “relatives” if, and only if,—

(a) they are members of a Hindu undivided family; or

(b) they are husband and wife; or

(c) they are related to each other in the manner indicated in Schedule I-A.’.

Amendment  
of section 8.

5. In section 8 of the principal Act, after the word “production”, the word “, processing” shall be inserted.

Amendment  
of section 17.

6. In section 17 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) The Court shall cause notice of the petition for confirmation of the alteration to be served on the Registrar who shall also be given a reasonable opportunity to appear before the Court and state his objections and suggestions, if any, with respect to the confirmation of the alteration.”.

Amendment  
of section 18.

7. In section 18 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) A certified copy of the order of the Court made under sub-section (5) of section 17 confirming the alteration,

together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be filed by the company with the Registrar who shall register the same and certify the registration under his hand within one month from the date of the filing of such documents.”;

(b) in sub-section (4), after the word “documents”, the words “or for the registration of the alteration” shall be inserted.

8. In section 19 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— Amendment  
of section 19.

“(2) If the registration is not effected within the period allowed under section 18, such alteration and the order of the Court made under sub-section (5) of section 17 and all proceedings connected therewith, shall, at the expiry of such period, become void and inoperative:

Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of one month.”.

9. In section 25 of the principal Act,—

Amendment  
of section 25.

(a) for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) It shall not be necessary for a body to which a licence is so granted to use the word “Limited” or the words “Private Limited” as any part of its name and, unless its articles otherwise provide, such body shall, if the Central Government by general or special order so directs and to the extent specified in the direction, be exempt from the operation of all or any of the following sections, that is to say, sections 53, 147, 159, 160, 161, 166, 171 to 173, 176, 188, 190, 259, 269, 280, 282, 285, 287 and 303.”;

(b) for sub-section (8), the following sub-section shall be substituted, namely:—

“(8) (a) A body in respect of which a licence under this section is in force shall not alter the provisions of its memorandum with respect to its objects except with the previous approval of the Central Government signified in writing.

(b) The Central Government may revoke the licence of such a body if it contravenes the provisions of clause (a).

(c) In according the approval referred to in clause (a), the Central Government may vary the licence by making it subject to such conditions and regulations as that Govern-

ment thinks fit, in lieu of, or in addition to, the conditions and regulations, if any, to which the licence was formerly subject.

(d) Where the alteration proposed in the provisions of the memorandum of a body under this sub-section is with respect to the objects of the body so far as may be required to enable it to do any of the things specified in clauses (a) to (g) of sub-section (1) of section 17, the provisions of this sub-section shall be in addition to, and not in derogation of, the provisions of that section.”

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Amendment of section 29. 10. In section 29 of the principal Act, the following proviso shall be added at the end, namely:—

“Provided that nothing in this section shall be deemed to prevent a company from including any additional matters in its articles in so far as they are not inconsistent with the provisions contained in the Form in any of the Tables C, D and E, adopted by the company.”

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Amendment of section 31.

11. In section 31 of the principal Act,—

(a) in sub-section (1), the following proviso shall be added at the end, namely:—

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“Provided that no alteration made in the articles under this sub-section which has the effect of converting a public company into a private company, shall have effect unless such alteration has been approved by the Central Government.”;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

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“(2A) Where any alteration such as is referred to in the proviso to sub-section (1) has been approved by the Central Government, a printed copy of the articles as altered shall be filed by the company with the Registrar within one month of the date of receipt of the order of approval.”

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Amendment of section 38. 12. In section 38 of the principal Act, for the proviso, the following proviso shall be substituted, namely:—

“Provided that this section shall not apply—

(a) in any case where the member agrees in writing either before or after a particular alteration is made, to be bound by the alteration; or

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(b) in any case where the company is a club or other association and the alteration requires the member to pay

recurring or periodical subscriptions or charges at a higher rate although he does not agree in writing to be bound by the alteration.”]

13. In section 39 of the principal Act, in sub-section (1),—

Amendment of section 39.

5 (a) for the words “seven days”, the words “fourteen days” shall be substituted; and

(b) for the words “payment of a fee of one rupee”, the words “payment in advance of a fee of three rupees” shall be substituted.]

10 14. In section 41 of the principal Act, in sub-section (2), for the word “agrees”, the words “agrees in writing” shall be substituted.

Amendment of section 41.

15. After section 43 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 43A.

15 “43A. (1) Notwithstanding anything to the contrary contained in this Act, where not less than twenty-five per cent. of the paid-up share capital of a private company is held by one or more bodies corporate, the private company shall, on the date on which the aforesaid percentage is first held by such body or bodies corporate, or where the aforesaid percentage has been first so held before the commencement of the Companies (Amendment) Act, 1959, on the expiry of the period of three months from the date of such commencement, become by virtue of this section a public company.]

Private company to become public company in certain cases.

25 (2) Within three months from the date on which a private company becomes a public company by virtue of this section, or within such further time as the Registrar may allow in this behalf, the company shall, by ordinary resolution, change, if necessary, its name in conformity with clause (a) of sub-section (1) of section 13 and alter its articles in such a manner that they no longer include the provisions relating to any of the matters specified in sub-clauses (a), (b) and (c) of clause (iii) of sub-section (1) of section 3.

35 (3) The company shall file with the Registrar a copy of the ordinary resolution referred to in sub-section (2) within one month of the date on which that resolution was passed.

(4) Section 23 shall apply to a change of name under this section as it applies to a change of name under section 21 and any alteration of articles made under this section shall be deemed to be an alteration made in pursuance of section 31.

(5) If a company makes default in complying with sub-section (2) or sub-section (3),—

(a) the company shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues; and

(b) every officer who is in default shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees for every day during which the default continues, or with both.

(6) Nothing in this section shall apply to a private company of which the entire paid-up share capital is held by another private company or by one or more bodies corporate incorporated outside India.”.

Amendment  
of section 49.

16. In section 49 of the principal Act,—

(a) in sub-section (1), after the words, brackets and figures “sub-sections (2) to (5)”, the words “or any other law for the time being in force” shall be inserted;

(b) in sub-section (2), the words “expressly described as a nominee of the company” shall be omitted;

(c) in sub-section (5), after clause (a), the following clause shall be inserted, namely:—

“(aa) from depositing with, or transferring to, or holding in the name of, the State Bank of India or a Scheduled Bank, being the bankers of the company, shares or securities, in order to facilitate the quick transfer thereof; or”;

(d) in sub-section (6), for the words “with a Scheduled Bank”, the words “with the State Bank of India or a Scheduled Bank” shall be substituted.

Amendment  
of section 53.

17. In section 53 of the principal Act, in sub-section (2), in clause (b), the words “unless the contrary is proved,” shall be omitted.

Amendment  
of section 60.

18. In section 60 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) The Registrar shall not register a prospectus unless the requirements of sections 55, 56, 57 and 58 and sub-sections (1) and (2) of this section have been complied with and the prospectus is accompanied by the consent in writing of the person, if any named therein as the auditor, legal adviser,



attorney, solicitor, banker or broker of the company or intended company, to act in that capacity."

19. In section 73 of the principal Act, in sub-section (1),—

Amendment  
of section 73.

5 (a) for the words "three weeks" occurring at both the places, the words "four weeks" shall be substituted; and

(b) for the words "six weeks", the words "seven weeks" shall be substituted.

20. In section 75 of the principal Act, in sub-section (1),—

Amendment  
of section 75.

10 (a) the word "and" at the end of clause (b) shall be omitted;

(b) for clause (c), the following clauses shall be substituted, namely:—

15 " (c) in the case of bonus shares, file with the Registrar a return stating the number and nominal amount of such shares comprised in the allotment and the names, addresses and occupations of the allottees; and

(d) file with the Registrar—

20 (i) a copy of the resolution passed by the company authorising the issue of shares at a discount together with a copy of the order of the Court sanctioning the issue and where the maximum rate of discount exceeds ten per cent., a copy of the order of the Central Government permitting the issue at the higher percentage;

25 (ii) a copy of the resolution authorising the issue of bonus shares."

21. In section 76 of the principal Act, in sub-section (2), for the words "any of its capital moneys", the words "any of its moneys" shall be substituted. Amendment  
of section 76.

22. In section 80 of the principal Act,—

30 (a) for the words "the capital redemption reserve fund" wherever they occur, the words "the capital redemption reserve account" shall be substituted;

Amendment  
of section 80.

(b) in sub-section (4), for the word and figures "section 601", the word and figures "section 611" shall be substituted.

35 23. In section 81 of the principal Act, in sub-section (1),—

Amendment  
of section 81.

(a) for the words "Where at any time subsequent to the first allotment of shares in a company, it is proposed to increase

the subscribed capital of the company by the issue of new shares, then, subject to any directions to the contrary which may be given by the company in general meeting, and subject only to those directions—”, the following words shall be substituted, namely:—

“Where at any time after the expiry of one year from the allotment of shares in a company made for the first time after its formation, the Board of directors decides to increase the subscribed capital of the company by the allotment of further shares, then, subject to any directions to the contrary which may be given by the company in general meeting—”;

(b) in clause (a), for the word “new”, the word “further” shall be substituted.

Amendment of section 84. 24. Section 84 of the principal Act shall be re-numbered as sub-section (1) of that section and after that sub-section as so re-numbered, the following sub-sections shall be inserted, namely:—

“(2) No duplicate of a certificate shall be issued to any member unless the original certificate issued to him—

(a) is proved to the satisfaction of the company to have been lost or destroyed, or

(b) is defaced and surrendered to the company.

(3) If any company contravenes sub-section (2), the company, and every officer who is in default, shall be punishable with fine which may extend to one thousand rupees.”

Amendment of section 89.

25. (1) In section 89 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) If, at the commencement of the Companies (Amendment) Act, 1959, the voting rights attached to any shares, by whatever name called, of any existing company limited by shares are not proportionate to the voting rights attached under sub-section (1) of section 87 to equity shares in respect of which the same amount of capital has been paid up, the company shall, within one year from such commencement, adjust the voting rights in respect of the shares first mentioned so as to bring them into conformity with the voting rights attached to such equity shares under sub-section (1) of section 87:

Provided that where shares of any class have lesser voting rights attached to them than equity shares, nothing in this sub-section shall require any company to increase such voting rights in order to bring them into conformity with the voting rights attached to equity shares.”;

(b) in sub-section (3), the following proviso shall be added at the end of the first paragraph, namely:—

“Provided that if default is made by a company in complying with this sub-section, a member of the company may, within six months from the date of the default, apply to the Court for an order under this sub-section.”.

(2) The amendments made by sub-section (1) in section 89 of the principal Act shall not affect any proceedings pending under that section immediately before the commencement of this Act and such proceedings may be continued after such commencement as if such amendments had not been made in that section.

26. For section 106 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 106.

“106. Where the share capital of a company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class, if such variation is authorised by the memorandum or the articles of the company and is not prohibited by the terms of issue of the shares of that class.”.

Alteration of rights of holders of special classes of shares.

27. In section 111 of the principal Act,—

(a) in sub-section (2), for the words “If, in pursuance of any such power, a company refuses”, the words “If a company refuses, whether in pursuance of any power under its articles or otherwise,” shall be substituted;

Amendment of section III.

(b) after sub-section (4), the following sub-section shall be inserted, namely:—

“(4A) Every appeal under sub-section (3) shall be made by a petition in writing and shall be accompanied by such fee not exceeding fifty rupees as may be prescribed by the Central Government.”;

(c) in sub-section (5), for the word “forthwith”, the words “within ten days of the receipt of the order” shall be substituted;

(d) after sub-section (5), the following sub-section shall be inserted, namely:—

“(5A) Before making an order under sub-section (5) on an appeal against any refusal of the company to register any transfer or transmission, the Central Government may require the company to disclose to it the reasons for such refusal, and on the failure or refusal of the company to disclose such reasons, that Government may, notwithstanding anything contained in the articles of the company, presume that the disclosure, if made, would be unfavourable to the company.”;

(e) after sub-section (8), the following sub-section shall be inserted, namely:—

“(9) If default is made in giving effect to the order of the Central Government within the period specified in sub-section (5) or to a direction of that Government given under the proviso to sub-section (8), the company, and every officer who is in default, shall be punishable with fine which may extend to one thousand rupees and with a further fine which may extend to one hundred rupees for every day during which the default continues.”.

Amendment  
of section  
113.

28. In section 113 of the principal Act, in sub-section (1), for the words “three months after the application”, the words “two months after the application” shall be substituted.

Amendment  
of section  
125.

29. In section 125 of the principal Act, in sub-section (1), the following proviso shall be added at the end, namely:—

“Provided that the Registrar may allow the particulars and instrument or copy as aforesaid to be filed within seven days next following the expiry of the said period of twenty-one days if the company satisfies the Registrar that it had sufficient cause for not filing the particulars and instrument or copy within that period.”.

Amendment  
of section  
138.

30. In section 138 of the principal Act,—

(a) in sub-section (1), the words “or in part” shall be omitted;

(b) in sub-section (3), the words “in whole or in part, as the case may be,” shall be omitted.

Amendment  
of section  
139.

31. In section 139 of the principal Act, the words “or in part” occurring for the first time and the words “in whole or in part” occurring for the second time shall be omitted.

32. In section 140 of the principal Act, the words "in whole or in part," shall be omitted.

Amendment  
of section  
140.

33. In section 141 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment  
of section  
141.

5       “(1) The Court, on being satisfied—

10               (a) that the omission to register a charge or to file in pursuance of section 128 the particulars in any case of series of debentures, within the time required by this Part, or that the omission or mis-statement of any particular with respect to any such charge or any such particulars or any memorandum of satisfaction or other entry made in pursuance of section 138, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company; or

15               (b) that on other grounds it is just and equitable to grant relief;

20               may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the time for registration of the charge or the filing of the particulars shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.”.

25       34. In section 142 of the principal Act, in sub-section (1), in clause (b), the words "in whole or in part," shall be omitted.

Amendment  
of section  
142.

35       35. In section 145 of the principal Act, for the words "any charge created before the commencement of this Act", the words "any charge created before, and remaining unsatisfied at, the commencement of this Act," shall be substituted.

Amendment  
of section  
145.

30       36. In section 147 of the principal Act,—

Amendment  
of section  
147.

(a) in sub-section (1), in clause (c),—

(i) after the words "its name", the words "and the address of its registered office" shall be inserted;

(ii) the word "advertisements" shall be omitted;

35       (iii) for the words "and in all bills of exchange", the words "and also have its name so mentioned in all bills of exchange" shall be substituted;

(b) in sub-section (4), in clause (b),—

(i) the word “, advertisement” shall be omitted;

(ii) for the words “its name is”, the words “its name and the address of its registered office are” shall be substituted.

Amendment  
of section  
149.

37. In section 149 of the principal Act, sub-section (8) shall be omitted.

Amendment  
of section  
154.

38. In section 154 of the principal Act,—

(a) in sub-section (1), the following proviso shall be added at the end, namely:—

“Provided that a company shall not close the register of members for a period of fifteen days next following the date on which dividends are declared.”;

(b) in sub-section (2), after the words “specified in that sub-section”, the following words, brackets and figure shall be inserted, namely:—

“or if the register of members is closed before the expiry of the period of fifteen days referred to in the proviso to sub-section (1)”.

Amendment  
of section  
155.

39. In section 155 of the principal Act,—

(a) in sub-section (1), for clause (a), the following clause shall be substituted, namely:—

“(a) without sufficient cause, the name of any person is, or is omitted to be, entered in, or is omitted from, the register of members of a company; or”;

(b) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) The provisions of sub-sections (1) to (4) shall apply in relation to the rectification of the register of debenture holders as they apply in relation to the rectification of the register of members.”.

Amendment  
of section  
156.

40. In section 156 of the principal Act,—

(a) after the words “to be filed”, the words “by the company” shall be inserted;

(b) the following *Explanation* shall be inserted, namely:—

“*Explanation.*—In computing the period of fourteen days prescribed under this section, the time taken in drawing

up the order of the Court and in obtaining a copy of that order shall be excluded.”.

41. In section 159 of the principal Act,—

Amendment  
of section  
159.

(a) in sub-section (1),—

5 (i) after the words “is held”, the words “or where the annual general meeting for any year has not been held, within forty-two days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act” shall be inserted;

10 (ii) in clause (g), for the words “and managers”, the words “managers and secretaries” shall be substituted;

(iii) the following proviso shall be added at the end, namely:—

15 “Provided that if any of the two immediately preceding returns has given as at the date of the annual general meeting with reference to which it was submitted, the full particulars required as to past and present members and the shares and stock held and transferred by them, the return in question shall contain only such of the  
20 particulars as relate to persons ceasing to be or becoming members since that date and to shares transferred since that date or to changes as compared with that date in the amount of stock held by a member.”;

25 (b) in sub-section (2), after the words “as circumstances admit”, the following words shall be inserted, namely:—

30 “and where the return is filed even though the annual general meeting has not been held on or before the latest day by which it should have been held in accordance with the provisions of this Act, the company shall file with the return a statement specifying the reasons for not holding the annual general meeting.”.

42. In section 160 of the principal Act, in sub-section (1),—

Amendment  
of section  
160.

35 (a) after the words “is held”, the words “or where the annual general meeting for any year has not been held within forty-two days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act” shall be inserted;

(b) after clause (a), the following clause shall be inserted, namely:—

“(aa) the names of members and the respective dates on which they became members and the names of persons who ceased to be members since the annual general meeting of the immediately preceding year, or where the said annual general meeting has not been held, since the latest date for the holding of that meeting, and the dates on which they so ceased;”;

(c) in clause (b), for the words “and its manager”, the words “its manager and its secretary” shall be substituted.

Amendment  
of section  
161.

43. In section 161 of the principal Act, in sub-section (2), in clause (a), the word “and” at the end of the clause shall be omitted and after that clause, the following clause shall be inserted, namely:—

“(aa) that since the date of the last annual return the transfer of all shares and debentures and the issue of all further certificates have been appropriately recorded in the books maintained for the purpose; and”.

Amendment  
of section  
163.

44. In section 163 of the principal Act,—

(a) in sub-section (3), for clause (b), the following clause shall be substituted, namely:—

“(b) require a copy of any such register, index or copy or of any part thereof, on payment in advance of such copying fees not exceeding one rupee as the company may determine, for every one hundred words or fractional part thereof required to be copied.”;

(b) in sub-section (4), for the words “ten days”, the words “fourteen days” shall be substituted.

Amendment  
of section  
165.

45. In section 165 of the principal Act, in sub-section (4), the words “on capital account” shall be omitted.

Amendment  
of section  
166.

46. In section 166 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

Provided that a company may hold its first general meeting within a period of not more than eighteen months from the date of its incorporation; and if such general meeting



is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year.”;

(b) in sub-section (2),—

5 (i) the words “; and the notices calling the meeting shall specify it as the annual general meeting” shall be omitted;

(ii) the following provisos shall be added at the end, namely:—

10 “Provided that the Central Government may exempt any class of companies from the provisions of this sub-section subject to such conditions as it may impose:

Provided further that—

15 (a) a public company or a private company which is a subsidiary of a public company, may by its articles fix the time for its annual general meetings and may also by a resolution passed in one annual general meeting fix the time for its subsequent annual general meetings; and

20 (b) a private company which is not a subsidiary of a public company, may in like manner and also by a resolution agreed to by all the members thereof, fix the time as well as the place for its annual general meeting.”

25 47. In section 168 of the principal Act, the following words shall be added at the end, namely:—

Amendment  
of section  
168.

“and in the case of a continuing default, with a further fine which may extend to two hundred and fifty rupees for every day during which such default continues”.

30 48. In section 171 of the principal Act, in sub-section (1), for the words “twenty-one”, the words “twenty-eight” shall be substituted.

Amendment  
of section  
171.

49. In section 172 of the principal Act, in sub-section (2), the following proviso shall be added at the end, namely:—

Amendment  
of section  
172.

35 “Provided that where the notice of a meeting is given by advertising the same in a newspaper circulating in the neighbourhood of the registered office of the company under sub-section (3) of section 53, the statement of material facts referred to in section 173 need not be annexed to the notice as required by that section but it shall be mentioned in the advertisement that the statement has been forwarded to the members of the company.”

Amendment  
of section  
176.

50. In section 176 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Any provision contained in the articles of a public company or of a private company which is a subsidiary of a public company, which specifies or requires a longer period than forty-eight hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of forty-eight hours had been specified in or required by such provision for such deposit.”

Insertion of  
new section  
187 A.

51. After section 187 of the principal Act, the following section shall be inserted, namely:—

Representa-  
tion of the  
President  
and Govern-  
ors in meet-  
ings of com-  
panies of  
which they  
are members.

“187A. (1) The President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit to act as his representative at any meeting of the company or at any meeting of any class of members of a company.

(2) A person appointed to act as aforesaid shall, for the purposes of this Act, be deemed to be a member of such a company and shall be entitled to exercise the same rights and powers (including the right to vote by proxy) as the President or, as the case may be, the Governor could exercise as a member of the company.”

Amendment  
of section  
190.

52. In section 190 of the principal Act,—

(a) in sub-section (1), for the words “twenty-eight days”, the words “twenty-one days” shall be substituted;

(b) for sub-sections (2) and (3), the following sub-section shall be substituted, namely:—

“(2) The company shall, immediately after the notice of the intention to move any such resolution has been received by it, give its members notice of the resolution in the same manner as it gives notice of the meeting, or if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than fourteen days before the meeting.”

Amendment  
of section  
192.

53. In section 192 of the principal Act,—

(a) in sub-section (1), after the words “every resolution”, the brackets, words and figures “(together with a copy of the

statement of material facts annexed under section 173 to the notice of the meeting in which such resolution has been passed)" shall be inserted;

5 (b) in sub-section (2), for the words "a copy of every such resolution or agreement", the words, brackets and figure "a copy of every resolution referred to in sub-section (1) which has the effect of altering the articles and a copy of every agreement referred to in that sub-section" shall be substituted;

10 (c) in sub-section (4), the word "and" at the end of clause (e) shall be omitted and after that clause, the following clauses shall be inserted, namely:—

"(ee) resolutions passed by a company—

15 (i) according consent to the exercise by its Board of directors of any of the powers under clause (a), clause (d) and clause (e) of sub-section (1) of section 293;

(ii) approving the appointment of sole selling agents under section 294; and

20 (eee) any resolution of the Board of directors of a company according consent required for contracts specified in section 297; and".

54. In section 193 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment  
of section  
193.

25 "(1) Every company shall cause minutes of all proceedings of general meetings, and of all proceedings of meetings of its Board of directors or of committees of the Board, to be kept by promptly making entries thereof in books kept for that purpose with their pages consecutively numbered, each such page being signed and the last page of the record of proceedings of each meeting being dated and signed by the Chairman of the meeting  
30 or by the Chairman of the next succeeding meeting."

55. For section 194 of the principal Act, the following section shall be substituted, namely:—

Substitution  
of new sec/  
tion for sec-  
tion 194.

35 "194. Minutes of meetings kept in accordance with the provisions of section 193 shall be evidence of the proceedings recorded therein."

Minutes to  
be evidence-

56. In section 195 of the principal Act, for the words and figures "have been made and signed in accordance with the provisions of sections 193 and 194", the words and figures "have been kept in accordance with the provisions of section 193" shall be substituted.

Amendment  
of section  
195.

Amendment  
of section  
196.

57. In section 196 of the principal Act, in sub-section (2),—

(a) for the words “seven days”, the words “fourteen days” shall be substituted;

(b) for the words “on payment of six annas”, the words “on payment in advance of such copying fees not exceeding one rupee as the company may determine,” shall be substituted. 5

Amendment  
of section  
197.

58. In section 197 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) No document purporting to be a report, or forming a part, of the proceedings of a general meeting of a company shall be circulated or advertised at the expense of the company unless the matters required by section 193 to be contained in the minutes of the proceedings of such meeting are also circulated or advertised.”. 10

Insertion of  
new heading  
and new  
section 197A.

59. After section 197 of the principal Act, the following heading and section shall be inserted, namely:— 15

*“Prohibition of simultaneous appointment of different categories of managerial personnel*

Company  
not to appo-  
int or employ  
certain  
different  
categories of  
managerial  
personnel at  
the same  
time.

197A. Notwithstanding anything contained in this Act or any other law or any agreement or instrument, no company shall, after the commencement of the Companies (Amendment) Act, 1959, appoint or employ at the same time, or after the expiry of six months from such commencement, continue the appointment or employment at the same time, of more than one of the following categories of managerial personnel, namely:— 25

(a) managing director,

(b) managing agent,

(c) secretaries and treasurers, and

(d) manager.”.

Substitution  
of new sec-  
tion for  
section 198.

60. For section 198 of the principal Act, the following section shall be substituted, namely:— 30

Overall  
maximum  
managerial  
remunera-  
tion and  
managerial  
remuneration  
in case of

‘198.(1) The total managerial remuneration payable by a public company or a private company which is a subsidiary of a public company, to its directors and its managing agent, secretaries and treasurers or manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that com- 35

pany for that financial year computed in the manner laid down in sections 349, 350 and 351, except that the remuneration of the directors shall not be deducted from the gross profits: absence or inadequacy of profits.

5        Provided that nothing in this section shall affect the operation of sections 352 to 354 and 356 to 360.

(2) The percentage aforesaid shall be exclusive of any fees payable to directors under sub-section (2) of section 309.

(3) Within the limits of the maximum remuneration specified in sub-section (1), a company may pay a monthly remuneration to its directors (including a managing or whole-time director) in accordance with the provisions of section 309 or to its manager in accordance with the provisions of section 387.

(4) Notwithstanding anything contained in sub-sections (1) to (3), if in any financial year, a company has no profits or its profits are inadequate, the company may, subject to the approval of the Central Government, pay to its directors (including any managing or whole-time director), its managing agent, secretaries and treasurers, or manager or if there are two or more of them holding office in the company, to all of them together by way of minimum remuneration, such sum not exceeding fifty thousand rupees per annum [exclusive of any fees payable to directors under sub-section (2) of section 309] as it considers reasonable:

Provided that where a monthly payment is being made or is proposed to be made to any managing or whole-time director or directors or the manager or to any one or more of them and the Central Government is satisfied that for the efficient conduct of the business of the company the minimum remuneration of fifty thousand rupees per annum is or will be insufficient, the Central Government may by order sanction an increase in the minimum remuneration to such sum, for such period and subject to such conditions, if any, as may be specified in the order.

*Explanation.*—For the purposes of this section and sections 309, 310, 311, 348, 352, 381 and 387, “remuneration” shall include,—

(a) any expenditure incurred by the company in providing any rent free accommodation, or any other benefit or amenity in respect of accommodation free of charge, to any of the persons specified in sub-section (1);

(b) any expenditure incurred by the company in providing any other benefit or amenity free of charge or at a concessional rate to any of the persons aforesaid;

(c) any expenditure incurred by the company in respect of any obligation or service which, but for such expenditure by the company, would have been incurred by any of the persons aforesaid; and 5

(d) any expenditure incurred by the company to effect any insurance on the life of, or to provide any pension, annuity or gratuity for, any of the persons aforesaid. 10

Amendment  
of section  
204.

61. In section 204 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Save as provided in sub-section (2), no company shall after the commencement of this Act, appoint or employ any firm or body corporate to or in any office or place of profit under the company, other than the office of managing agent, secretaries and treasurers or trustee for the holders of debentures of the company, for a term exceeding five years at a time: 20

Provided that the initial appointment or employment of a firm or body corporate to or in any office or place of profit as aforesaid may, with the approval of the Central Government, be made for a term not exceeding ten years.”;

(b) in sub-section (5), for the words “obtains anything”, 25 the words “obtains from the company anything” shall be substituted.

Substitution  
of new sec-  
tion for sec-  
tion 205.

62. For section 205 of the principal Act, the following section shall be substituted, namely:—

Dividend  
to be paid  
only out of  
profits.

“205. (1) No dividend shall be declared or paid by a com- 30 pany for any financial year except out of the profits of the company for that year arrived at after providing for depreciation to

the extent specified in section 350 or out of the profits of the company for the previous year or years arrived at after providing for depreciation in the same manner and remaining undistributed or out of both or out of moneys provided by the Central Government or a State Government for the payment of the dividend in pursuance of a guarantee given by that Government.

(2) No dividend shall be payable except in cash.

(3) Nothing in this section shall be deemed—

(a) to affect in any manner the operation of section 208;

10 or

(b) to prohibit the capitalisation of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or for paying up any amounts for the time being unpaid on any shares held by the members of the company.”

15 63. For section 207 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 207.

20 “207. (1) Every company shall, within fourteen days of the declaration of a dividend, deposit in a Scheduled Bank in a separate account the total amount of the dividend payable; and warrants in respect of such dividend posted by a company shall be made payable out of that separate account.

Penalty for failure to deposit total amount of dividend or to distribute dividend within a specified time.

25 (2) Where a dividend has been declared but the total amount of the dividend has not been deposited in a Scheduled Bank within the time specified in sub-section (1) or the warrant in respect of such dividend has not been posted within three months from the date of the declaration, to any shareholder entitled to the payment of the dividend, every director of the company, its managing agent or secretaries and treasurers or manager and where the managing agent is a firm or a body corporate, every partner in the firm and every director of the body corporate and where the secretaries and treasurers are a firm, every partner in the firm, and where they are a body corporate, every director thereof, shall, if he is knowingly a party to the default, be punishable with simple imprisonment for a term  
30 which may extend to fourteen days and shall also be liable to fine:  
35

Provided that no offence shall be deemed to have been

committed within the meaning of the foregoing provision in the following cases, namely:—

(a) where the dividend could not be paid by reason of the operation of law;

(b) where the directions given by a shareholder to a company regarding the payment of the dividend cannot be complied with;

(c) where there is any dispute regarding the right to receive the dividend;

(d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(e) where, for any other reason, the failure to post the warrant of dividend within the period of three months as aforesaid was not due to any default on the part of the company.”

Amendment  
of section  
209.

64. In section 209 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Every company shall keep at its registered office proper books of account with respect to—

(a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;

(b) all sales and purchases of goods by the company; and

(c) the assets and liabilities of the company:

Provided that all or any of the books of account aforesaid may be kept at such other place in India as the Board of directors may decide and when the Board of directors so decides, the company shall, within seven days of the decision, send to the Registrar intimation in writing of the full address of that other place.”;

(b) in sub-section (4), after the word “director”, the words “or by the Registrar” shall be inserted;

(c) after sub-section (4), the following sub-section shall be inserted, namely:—

“(4A) The books of account of every company relating



to a period of not less than eight years immediately preceding the current year shall be preserved in good order:

5 Provided that in the case of a company incorporated less than eight years before the current year, the books of account for the entire period preceding the current year shall be so preserved.”;

(d) in sub-section (5), in the proviso, the words “that he had reasonable ground to believe, and did believe,” shall be omitted;

10 (e) in sub-section (6),—

(i) in clause (a), for the words “or secretaries and treasurers” occurring at both the places, the words “secretaries and treasurers or manager” shall be substituted;

15 (ii) in clause (d), after the words “secretaries and treasurers”, the words “nor a manager” shall be inserted;

(f) in sub-section (7), after the words “secretaries and treasurers”, the word “manager,” shall be inserted.

65. In section 210 of the principal Act,—

Amendment  
of section  
210.

20 (a) in sub-section (3), in clause (b), the words, figures, brackets and letter “or in cases where an extension of time has been granted for holding the meeting under the proviso to section 166(1) (c), by more than nine months and the extension so granted” shall be omitted;

25 (b) in sub-section (5), in the proviso, the words “that he had reasonable ground to believe, and did believe,” shall be omitted.

66. In section 211 of the principal Act,—

Amendment  
of section  
211.

(a) in sub-section (1),—

30 (i) for the words “as circumstances admit”, the words ‘as circumstances admit, and in preparing the balance-sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance-sheet under the heading “Notes” at the end of that Part’ shall be substituted;

35 (ii) in the proviso, after the words “banking company”, the words “or any company engaged in the generation or supply of electricity” shall be inserted;

40 (b) in sub-section (2), in the proviso, after the words “banking company”, the words “or any company engaged in the generation or supply of electricity” shall be inserted;

(c) in sub-section (3), for the words "national interest", the words "public interest" shall be substituted;

(d) in sub-section (5), in clause (iii), for the words and figures "the Electricity Supply Act, 1948", the words, figures<sup>54 of 1948.</sup> and brackets "both the Indian Electricity Act, 1910, and the<sup>9 of 1910.</sup> Electricity (Supply) Act, 1948" shall be substituted;<sup>54 of 1948.</sup> 5

(e) in sub-section (7), in the proviso, the words "that he had reasonable ground to believe and did believe" shall be omitted;

(f) in sub-section (8), after the words "secretaries and treasurers," the word "manager," shall be inserted. 10

Amendment  
of section  
212.

67. In section 212 of the principal Act,—

(a) in sub-section (2),—

(i) for clause (a), the following clause shall be substituted, namely:— 15

"(a) The balance-sheet referred to in clause (a) of sub-section (1) shall be made out in accordance with the requirements of this Act,—

(i) as at the end of the financial year of the subsidiary, where such financial year coincides with the financial year of the holding company; 20

(ii) as at the end of the financial year of the subsidiary last before that of the holding company where the financial year of the subsidiary does not coincide with that of the holding company." 25

(ii) in clause (c), for the words "The financial year aforesaid", the words "Where the financial year of the subsidiary does not coincide with that of the holding company, the financial year aforesaid" shall be substituted;

(b) in sub-section (9), in the first proviso, the words "that he had reasonable ground to believe, and did believe," shall be omitted; 30

(c) in sub-section (10), after the words "secretaries and treasurers," the word "manager," shall be inserted.

Amendment  
of section  
216.

68. In section 216 of the principal Act, after the words "auditors' report", the brackets and words "(including the auditors' separate, special or supplementary report, if any)" shall be inserted. 35

**69. In section 217 of the principal Act,—**Amendment  
of section  
217.**(a) in sub-section (1),—**

(i) in clause (b), the word “either” and the words “or in a subsequent balance-sheet; and” shall be omitted;

5 (ii) after clause (c), the following clauses shall be inserted, namely:—

10 “(d) material changes, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the balance-sheet relates and the date of the report; and

(e) commitments, if any, in respect of the purchase or sale of investments and capital expenditure other than those shown on the face of the balance-sheet.”;

15 (b) in sub-section (5), in the second proviso, the words “that he had reasonable ground to believe, and did believe,” shall be omitted.

20 **70. In section 219 of the principal Act, in sub-section (1), for** Amendment  
the words “twenty-one days” occurring at both the places, the words of section  
“twenty-eight days” shall be substituted. 219.

**71. In section 220 of the principal Act,—**Amendment  
of section  
220.**(a) in sub-section (1),—**

(i) in clause (a), the words “in the case of a public company,” shall be omitted;

25 (ii) clause (b) shall be omitted;

(iii) the following proviso shall be added at the end, namely:—

“Provided that,—

30 (i) in the case of a private company which is not a subsidiary of a public company, or

(ii) in the case of a private company of which the entire paid-up share capital is held by one or more bodies corporate incorporated outside India, or

35 (iii) in the case of a company which becomes a public company by virtue of section 43A, if the Central Government directs that it is not in the public interest that any person other than a member

of the company shall be entitled to inspect, or obtain copies of, the profit and loss account of the company, no person other than a member of the company concerned shall be entitled to inspect, or obtain copies of, the profit and loss account of that company under section 610.”;

(b) in sub-section (2), the words “public or private” shall be omitted.

Amendment  
of section  
224.

72. In section 224 of the principal Act, in sub-section (1), for the words “the next annual general meeting”, the words “the next annual general meeting; and every auditor so appointed, unless he is a retiring auditor, shall, within seven days of the receipt from the company of the intimation of his appointment, inform the Registrar in writing that he has accepted, or refused to accept, the appointment” shall be substituted.

Amendment  
of section  
226.

73. In section 226 of the principal Act, in sub-section (2), in clause (a), for the words “those territories”, the word “India” shall be substituted.

Amendment  
of section  
227.

74. In section 227 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) The accounts of a company shall not be deemed as not having been, and the auditors’ report shall not state that those accounts have not been, properly drawn up on the ground merely that the company has not disclosed certain matters if—

(a) those matters are such as the company is not required to disclose by virtue of any provisions contained in this or any other Act, and

(b) those provisions are specified in the balance-sheet and profit and loss account of the company.”.

Amendment  
of section  
228.

75. In section 228 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “unless the company in general meeting decides otherwise, be audited”, the words and figures “be audited by the company’s auditor appointed under section 224 or” shall be substituted;

(ii) for one words “by a person qualified as aforesaid”, the words “by the company’s auditor or a person qualified as aforesaid” shall be substituted;

(b) in sub-section (2), for the words "not so audited", the words "audited by a person other than the company's auditor" shall be substituted;

5 (c) after sub-section (2), the following sub-section shall be inserted, namely:—

10 " (3) (a) Where the company in general meeting decides to have the accounts of a branch office audited otherwise than by the company's auditor, the company in that meeting shall appoint an auditor or auditors for the audit of those accounts or authorise the Board of directors to appoint such auditor or auditors in consultation with the company's auditor.

15 (b) The auditor or auditors so appointed shall have the same powers and duties in respect of the audit of the accounts of the branch office as the company's auditor has in respect of the same.

(c) The remuneration of the auditor or auditors so appointed shall be fixed by the company or by the Board of directors, if so authorised by the company."

20 76. In section 234 of the principal Act,—

Amendment  
of section  
234.

(a) after sub-section (3), the following sub-section shall be inserted, namely:—

25 " (3A) If no information or explanation is furnished within the time specified or if the information or explanation furnished is, in the opinion of the Registrar, inadequate, the Registrar may by another written order call on the company to produce before him for his inspection such documents, books and papers as he considers necessary within such time as he may specify in the order; and it shall  
30 be the duty of the company, and of all persons who are officers of the company, to produce such documents, books and papers."

(b) in sub-section (4),—

35 (i) after the words "any such information or explanation", the words "or if the company or any such person as is referred to in sub-section (3A) refuses or neglects to produce any such documents, books and papers" shall be inserted;

(ii) in clause (b), after the words "the Court", the words "trying the offence" shall be inserted; and for the words "such documents", the words "such documents, books and papers" shall be substituted;

(c) in sub-section (5),—

5

(i) for the words "any document" occurring for the first time, the words, brackets, figures and letter "any document, book or paper, produced whether in pursuance of an order of the Registrar under sub-section (3A) or of an order of the Court under sub-section (4)" shall be substituted; 10

(ii) for the words "any document" occurring for the second time, the words "any document, book or paper" shall be substituted;

(d) in sub-section (6),—

(i) for the words "if after perusal of such information 15 or explanation", the words, brackets, figures and letter "if after perusal of such information or explanation, whether furnished by the company or any person referred to in sub-section (2) or (3) or obtained from any document, book or paper produced whether in pursuance of an order 20 of the Registrar under sub-section (3A) or of an order of the Court under sub-section (4)," shall be substituted;

(ii) for the words "the document in question", the words "the original document submitted to him" shall be substituted; 25

(e) in sub-section (7), after the brackets and figure "(3),", the brackets, figure and letter "(3A)," shall be inserted.

Insertion of  
new section  
234A.

77. After section 234 of the principal Act, the following section shall be inserted, namely:—

Seizure of  
documents  
by Regis-  
trar.

234A. (1) Where, upon information in his possession or 30 otherwise, the Registrar has reason to believe that documents, books and papers of, or relating to, any company or other body corporate, or any managing agent or secretaries and treasurers of such company or other body corporate, or any associate of such managing agent or secretaries and treasurers, which are in 35 their custody or power, may be destroyed or tampered with, the Registrar may make an application to the Magistrate of the First Class having jurisdiction for an order for the seizure of such documents, books and papers.

(2) After considering the application and hearing the Registrar, if necessary, the Magistrate may, by order, authorise the Registrar—

(a) to enter, with such assistance as may be required, the place or places where such documents, books and papers are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize such documents, books and papers as he considers necessary.

(3) The Registrar shall return the documents, books and papers seized under this section as soon as may be after he has taken copies of, or extracts from, or otherwise dealt with, the same, to the company or the other body corporate or, as the case may be, to the managing agent, secretaries and treasurers or associate, from whose custody or power they were seized and inform the Magistrate of such return.

(4) Save as otherwise provided in this section, every search made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898, relating to searches made under that Code."

78. In section 239 of the principal Act,—

Amendment  
of section  
239.

(a) in sub-section (1), for clause (c), the following clause shall be substituted, namely:—

"(c) any other body corporate which is, or has at any relevant time been, managed by the company or whose Board of directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of—

(i) the company, or

(ii) any of the directors of the company, or

(iii) any company any of whose directorships are held by the employees or nominees of those having the control and management of the first-mentioned company; or";

(b) in sub-section (2), the following proviso shall be added at the end, namely:—

"Provided that before according approval under this sub-section, the Central Government shall give the body

corporate or person a reasonable opportunity to show cause why such approval should not be accorded.”.

Amendment  
of section  
240.

79. In section 240 of the principal Act,—

(a) in sub-section (1), for the words “all officers” wherever they occur, the words “all officers and other employees” shall be substituted;

(b) for sub-section (3), the following sub-sections shall be substituted, namely:—

“(3) If any such person fails without reasonable cause or refuses— 10

(a) to produce to an inspector any book or paper which it is his duty under sub-section (1) to produce; or

(b) to answer any question which is put to him by the inspector in pursuance of sub-section (2); 15

the inspector may certify the failure or refusal under his hand to the Court and make an application to the Court to hold an enquiry into the case; and the Court may, thereupon, after taking such evidence as may be produced against or on behalf of the alleged offender and hearing his explanation, make an order for the production by him before the inspector all such books or papers within a date to be specified in the order or requiring such person to answer any question which may be put to him by the inspector.

(3A) Any such person who disobeys an order of the Court under sub-section (3), shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both and also with a further fine which may extend to two hundred rupees for every day during which the disobedience continues.”. 25 30

Insertion of  
new section  
240A.

80. After section 240 of the principal Act, the following section shall be inserted, namely:—

Seizure of  
documents  
by inspec-  
tor.

“240A. (1) Where in the course of investigation under section 235 or section 237 or section 239, the inspector has reason to believe that the books and papers of, or relating to any company or other body corporate, or any managing agent or secretaries and treasurers of such company or other body corporate, or any 35



associate of such managing agent or secretaries and treasurers, which are in their custody or power, may be destroyed or tampered with, the inspector may make an application to the Magistrate of the First Class having jurisdiction for an order for the seizure of such books and papers.

(2) After considering the application and hearing the inspector, if necessary, the Magistrate may by order authorise the inspector—

(a) to enter, with such assistance, as may be required, the place or places where such books and papers are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books and papers he considers necessary for the purposes of his investigation.

(3) The inspector shall keep in his custody the books and papers seized under this section for such period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the company or, as the case may be, the other body corporate, the managing agent, secretaries and treasurers or associate, from whose custody or power they were seized and inform the Magistrate of such return.

(4) Save as otherwise provided in this section, every search made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898, relating to searches made under that Code.”

81. In section 242 of the principal Act, in sub-section (1), for the words “all officers”, the words “all officers and other employees” shall be substituted. Amendment of section 242.

82. In section 245 of the principal Act,—

(a) in sub-section (1), in clause (c), in sub-clause (i), for the words, brackets, letters and figures “the report, where the inspector was appointed under clause (a) or (b) of section 235 or clause (a) of section 237”, the words “the report of the inspector” shall be substituted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Any amount for which a company or body corporate is liable by virtue of clause (b) of sub-section (1) shall

be a first charge on the sums or property mentioned in that clause and shall be recoverable as an arrear of land revenue.”;

(c) sub-section (3) shall be omitted.

Amendment  
of section  
247.

83. In section 247 of the principal Act, in sub-section (5), in the first proviso, for the words “officers and agents”, the words “officers and other employees and agents” shall be substituted. 5

Amendment  
of section  
250.

84. In section 250 of the principal Act,—

(a) after sub-section (2), the following sub-sections shall be inserted, namely:— 10

“(2A) Where as a result of transfer of shares in a company, a change—

(a) in the composition of the Board of directors, or

(b) where the managing agent is an individual, of the managing agent, or 15

(c) where the managing agent is a firm or a body corporate, in the constitution of the managing agent,

of the company may take place and the Central Government is of the opinion that any such change would be prejudicial to the public interest, that Government may, by order, direct that the voting rights in respect of those shares shall not be exercisable by the transferees of those shares or any persons claiming through or under them for such period not exceeding three years as may be specified in the order. 20

(2B) Where the Central Government has reason to believe that a transfer of shares in a company is likely to take place whereby a change— 25

(a) in the composition of the Board of directors, or

(b) where the managing agent is an individual, of the managing agent, or 30

(c) where the managing agent is a firm or a body corporate, in the constitution of the managing agent,

of the company may take place and the Central Government is of the opinion that any such change would be prejudicial to the public interest, that Government may by order prohibit the transfer of shares in the company for such period not exceeding three years as may be specified in the order.”; 35

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

5 “(3) Where the Central Government makes an order under sub-section (1) or an order under sub-section (2A) or (2B) or refuses to vacate any such order, any person aggrieved thereby may apply to the Court and the Court may, if it thinks fit, by order, vacate any such order of the Central Government.”;

10 (c) in sub-section (4), for the words and brackets “Any order (whether of the Central Government or of the Court), directing that any shares shall cease to be subject to the said restrictions,”, the words, brackets and figure “Any order of the Central Government or of the Court vacating an order under sub-section (1)” shall be substituted;

15 (d) in sub-section (5),—

20 (i) in clause (b), for the words “the said restrictions applicable to the case; or”, the words, brackets, figures and letter “the said restrictions applicable to the case under sub-section (2) or by reason of any order under sub-section (2A);” shall be substituted;

(ii) after clause (b), the following clause shall be inserted, namely:—

25 “(bb) transfers any shares when he is prohibited from doing so by an order made under sub-section (2B); or”;

30 (iii) in clause (c), for the words “subject to the said restrictions”, the words, brackets, figures and letter “subject to the said restrictions under sub-section (2) or of the fact of their being subject to an order under sub-section (2A)” shall be substituted.

85. In section 252 of the principal Act,—

Amendment  
of section  
252.

(a) in sub-section (1), the words “, and every private company which is a subsidiary of a public company,” shall be omitted;

35 - (b) in sub-section (2), the words “which is not a subsidiary of a public company” shall be omitted.

86. In section 253 of the principal Act, the words “public or private” shall be omitted.

Amendment  
of section  
253.

Amendment  
of section  
255.

87. In section 255 of the principal Act, in sub-section (1), for the words "Not less than two-thirds", the words "Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds" shall be substituted.

Amendment  
of section  
256.

88. In section 256 of the principal Act, after sub-section (5), 5  
the following *Explanation* shall be inserted, namely:—

*'Explanation.*—In this section and in section 257, the expression "retiring director" means a director retiring by rotation.'

Amendment  
of section  
257.

89. In section 257 of the principal Act, after sub-section (1),  
the following sub-section shall be inserted, namely:— 10

"(1A) A copy of the notice under sub-section (1) shall be advertised not less than seven days before the meeting in at least two newspapers circulating in the place where the registered office of the company is located, of which one is published in English language and the other in the regional 15  
language of that place; and the notice shall be deemed to be duly served on every member of the company on the day on which the advertisement first appears in any of such newspapers."

Amendment  
of section  
261.

90. In section 261 of the principal Act,— 20

(a) in sub-section (1), for the words "none of the following persons shall be appointed as a director of the company whose period of office is liable to determination by retirement of directors by rotation, except by a special resolution passed by the company:—", the following words and figures shall be 25  
substituted, namely:—

"none of the following persons shall be appointed—

(i) as a director of the company whose period of office is liable to determination by retirement of directors by rotation, or 30

(ii) to fill a casual vacancy in the office of a director under section 262, or

(iii) as an additional director under section 260,  
or

(iv) as an alternate director under section 313, 35

except by a special resolution passed by the company:—";

(b) in sub-section (2), for the words "as a director of the company", the words and figures "as a director or an additional

or alternate director of the company or to fill, a casual vacancy in the office of a director under section 262" shall be substituted.

91. In section 263 of the principal Act, in sub-section (2), in the proviso, for the words "retiring directors", the words "the retiring by rotation" shall be substituted. Amendment of section 263.

92. After section 263, the following section shall be inserted, namely:— Insertion of new section 263A.

10 "263A. Nothing contained in sections 177, 255, 256 and 263 shall affect any provision in the articles of a company for the election by ballot of all its directors at each annual general meeting if such company does not carry on business for profit or prohibits the payment of a dividend to its members." Sections 177, 255, 256 and 263 not to apply in relation to companies not carrying business for profit, &c.

93. For section 264 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 264.

15 "264. (1) Every person (other than a person who has left at the office of the company a notice under section 257 signifying his candidature for the office of a director) proposed as a candidate for the office of a director shall sign, and file with the company, his consent in writing to act as a director, if appointed. Consent of candidate for directorship to be filed with the company and consent to act as director to be filed with the Registrar.

20 (2) A person other than a director re-appointed after retirement by rotation shall not act as a director of a company unless he has within seven days of his appointment signed, and filed with the Registrar, his consent in writing to act as such director.

-5 (3) This section shall not apply to a private company unless it is a subsidiary of a public company."

94. In section 267 of the principal Act, in clause (c), the words "in India" shall be omitted. Amendment of section 267.

95. For section 269 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 269.

35 "269. (1) In the case of a public company or a private company which is a subsidiary of a public company, whether such public company or private company is an existing company or not, the appointment of a person for the first time as a managing or whole-time director shall not have any effect unless approved by the Central Government: Appointment or re-appointment of managing or whole-time director to require Government approval in certain cases

Provided that in the case of a public company, or a private company which is a subsidiary of a public company, incorporated after the commencement of the Companies (Amendment) Act, 1959, the appointment of a person as a managing or whole-time director for the first time after such incorporation may be made without the approval of the Central Government but such appointment shall cease to have effect after the expiry of three months from the date of such incorporation unless the appointment has been approved by that Government. 5

(2) Where a public company or a private company which is a subsidiary of a public company, is an existing company, the re-appointment of a person as a managing or whole-time director for the first time after the commencement of the Companies (Amendment) Act, 1959, shall not have any effect unless approved by the Central Government." 10 15

Amendment  
of section  
271.

96. In section 271 of the principal Act, for the words "this Act", the words, brackets and figures "the Companies (Amendment) Act, 1959," and for the words "file with the company", the words "file with the Registrar" shall be substituted

Amendment  
of section  
274.

97. In section 274 of the principal Act, in sub-section (1), in clause (d), the words "in India" shall be omitted. 20

Amendment  
of section  
280.

98. In section 280 of the principal Act,—

(a) in sub-section (2), after the existing proviso, the following further proviso shall be inserted, namely:—

"Provided further that where a person has been appointed for a term not exceeding three years as a director of a public company or of a private company which is a subsidiary of a public company, before he has attained the age of sixty-five years, he shall not be required to vacate his office merely on the ground that he has attained that age before the expiry of the said term."; 25 30

(b) in sub-section (3), for the words "retiring directors", the words "a director retiring by rotation" shall be substituted

Amendment  
of section  
283.

99. In section 283 of the principal Act,—

(a) in sub-section (1),—

(i) for the words "The office of a director shall be vacated if—", the words "The office of a director shall become vacant if—" shall be substituted; 35

(ii) for clause (e), the following clause shall be substituted, namely:—

5 “(e) he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months;”;

(iii) in clause (f), the words “unless the Central Government has, by notification in the Official Gazette, removed the disqualification incurred by such failure” shall be added at the end;

10 (iv) in clause (h), for the words “he, or any firm in which”, the words and brackets “he (whether by himself or by any person for his benefit or on his account), or any firm in which” shall be substituted;

15 (v) the word “or” at the end of clause (j) shall be omitted and the word “or” shall be added at the end of clause (k) and after that clause, the following clause shall be inserted, namely:—

20 “(l) having been appointed a director by virtue of his holding any office or other employment in the company, or as a nominee of the managing agent of the company, he ceases to hold such office or other employment in the company or, as the case may be, the managing agency comes to an end.”;

25 (b) after sub-section (2), the following sub-section shall be inserted, namely:—

30 “(2A) Subject to the provisions of sub-sections (1) and (2), if a person functions as a director when he knows that the office of director held by him has become vacant on account of any of the disqualifications, specified in the several clauses of sub-section (1), he shall be punishable with fine which may extend to five hundred rupees for each day on which he so functions as a director.”

100. For section 285 of the principal Act, the following section shall be substituted, namely:—

35 “285. In the case of every company, a meeting of its Board of directors shall be held at least once in every three calendar months; and not more than two calendar months shall intervene between any two meetings:

Substitution of new section for section 285.

Board to meet at least once in every three calendar months,

Provided that the Central Government may, by notification in the Official Gazette, direct that the provisions of this section shall not apply in relation to any class of companies or shall apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in the notification." 5

Amendment  
of section  
287.

101. In section 287 of the principal Act, in sub-section (2), in the proviso, after the words "who are not interested", the words "present at the meeting being not less than two" shall be inserted.

Amendment  
of section  
292.

102. In section 292 of the principal Act,— 10

(a) in sub-section (1), for the proviso, the following provisos and *Explanations* shall be substituted, namely:—

"Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the managing agent, secretaries and 15 treasurers, the manager or any other principal officer of the company or in the case of a branch office of the company, a principal officer of the branch office, the powers specified in clauses (c), (d) and (e) to the extent specified in sub-sections (2), (3) and (4) respectively, on such conditions 20 as the Board may prescribe:

Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, 25 or the placing of moneys on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of moneys or, as the case may be, a making of loans by a banking company within the meaning of this section. 30

*Explanation. I.*—Nothing in clause (c) of sub-section (1) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act. 35

*Explanation. II.*—In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (c) of sub-section (1) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit 40 or otherwise and not the actual day to day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.";



(b) in sub-section (2), after the words "the total amount", the words "outstanding at any one time" shall be inserted.

103. In section 293 of the principal Act,—

Amendment  
of section  
293.

(a) in sub-section (1),—

5 (i) in clause (b), the words "except in the case of renewal or continuance of an advance made by a banking company to its director in the ordinary course of business" shall be added at the end;

10 (ii) in clause (c), for the words "the sale proceeds resulting from the acquisition, after the commencement of this Act, without the consent of the company", the words "the amount of compensation received by the company in respect of the compulsory acquisition, after the commencement of this Act" shall be substituted;

15 (iii) the existing *Explanation* shall be numbered as *Explanation III* and before the explanation as so numbered, the following *Explanations* shall be inserted, namely:—

20 *Explanation I.*—Every resolution passed by the company in general meeting in relation to the exercise of the power referred to in clause (d) or in clause (e) shall specify the total amount up to which moneys may be borrowed by the Board of directors under clause (d) or, as the case may be, the total amount which may be contributed to charitable and other funds in any financial year under clause (e).

30 *Explanation II.*—The expression "temporary loans" in clause (d) means loans repayable on demand or within six months from the date of the loan such as short term, cash credit arrangements, the discounting of bills and the issue of other short term loans of a seasonal character, but does not include loans raised for the purpose of financing expenditure of a capital nature.;

(b) after sub-section (5), the following sub-sections shall be inserted, namely:—

35 "(6) Every company shall disclose in its profit and loss account any amount contributed by it under clause (e) of sub-section (1) to any political party or for any political purpose to any individual or body during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party, individual

or body to which or to whom such amount has been contributed.

(7) The provisions of this section in so far as they relate to contributions made by a company to any political party or for any political purpose to any individual or body shall also apply to a private company which is not a subsidiary of a public company."

A amendment  
of section  
294.

104. In section 294 of the principal Act,—

(a) in sub-section (1), for the words "in general meeting within a period of six months from the date on which the appointment is made", the words "in the first general meeting held after the date on which the appointment is made" shall be substituted;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) If the company in the general meeting as aforesaid disapproves of the appointment, it shall cease to be valid with effect from the date of that general meeting.";

(c) after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) Notwithstanding anything contained in the foregoing provisions of this section,—

(a) where at any time during the period beginning on the 1st day of April, 1956, and ending on the commencement of the Companies (Amendment) Act, 1959, a managing agent has resigned his office and has been appointed as sole selling agent of the company whose managing agency he has resigned, the sole selling agency agreement whether taken in his own name or in association with, or in the name of any other person for his benefit or on his own account, shall, unless approved by the Central Government within a period of six months from such commencement, become void and inoperative and the appointment as sole selling agent shall come to an end on the expiry of that period;

(b) no managing agent who has resigned his office at any time after the commencement of the Companies (Amendment) Act, 1959, shall be appointed during a period of three years from the date of his resignation as the sole selling agent of the company whose managing agency he has resigned;

5 (c) the Central Government may, by notification in the Official Gazette, direct that no sole selling agent in relation to any trade, business or industry or any commodities specified in the notification, shall be appointed by a company engaged in such trade, business or industry or engaged in the production or manufacture of, or dealing in, such commodities unless the individual, firm or body corporate proposed to be appointed as the sole selling agent, the area in which such sole selling agent, 10 if appointed, will operate and the terms and conditions of the sole selling agency agreement have been approved by the Central Government;

15 (d) any appointment of a sole selling agent in relation to any trade, business or industry or any commodities specified in the notification under clause (c) existing on the date of the notification shall cease to have any effect unless such appointment has been approved by the Central Government within six months from the date of the notification.”.

20 105. In section 295 of the principal Act,—

Amendment  
of section  
295. 1

(a) in sub-section (1), for the words “shall, without obtaining the previous approval of the Central Government in that behalf,” the words “without obtaining the previous approval of the Central Government in that behalf shall, directly or indirectly,” shall be substituted; 25

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Sub-section (1) shall not apply to—

30 (a) any loan made, guarantee given or security provided—

(i) by a private company unless it is a subsidiary of a public company, or

(ii) by a banking company;

(b) any loan made—

35 (i) by a holding company to its subsidiary, or

(ii) by a company which is the managing agent or secretaries and treasurers of another company to that other company;

(c) any guarantee given or security provided—

(i) by a holding company in respect of any loan made to its subsidiary, or

(u) by a company which is the managing agent or secretaries and treasurers of another company in respect of any loan made to that other company.”;

(c) in sub-section (6), after the words “or security provided”, the words, letters and figures “after the 1st day of April, 1956,” shall be inserted.

Substitution  
of new sec-  
tion for sec-  
tion 296.

106. For section 296 of the principal Act, the following section shall be substituted, namely:—

Application  
of section  
295 to book  
debts in cer-  
tain cases.

“296. Section 295 shall apply to any transaction represented by a book debt which was from its inception in the nature of a loan or an advance.”.

Amendment  
of section  
297.

107. In section 297 of the principal Act, for sub-sections (2), (3), (4) and (5), the following sub-sections shall be substituted, namely:—

“(2) Nothing contained in clause (a) of sub-section (1) shall affect—

(a) the purchase of goods and materials from the company, or the sale of goods and materials to the company, by any director, relative, firm, partner or private company as aforesaid for cash at prevailing market prices; or

(b) any contract or contracts between the company on one side and any such director, relative, firm, partner or private company on the other for sale, purchase or supply of any goods, materials and services in which either the company or the director, relative, firm, partner or private company, as the case may be, regularly trades or does business:

30

Provided that such contract or contracts do not relate to goods and materials the value of which, or services the cost of which, exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract or contracts; and

(c) in the case of a banking or insurance company, any transaction in the ordinary course of business of such company with any director, relative, firm, partner or private company as aforesaid.

(3) Notwithstanding anything contained in sub-sections (1) and (2), a director, relative, firm, partner or private company as aforesaid may, in circumstances of urgent necessity, enter, without obtaining the consent of the Board, into any contract with the company for the sale, purchase or supply of any goods, materials or services even if the value of such goods or cost of such services exceeds five thousand rupees in the aggregate in any year comprised in the period of the contract; but in such a case, the consent of the Board shall be obtained at a meeting within three months of the date on which the contract was entered into.

(4) Every consent of the Board required under this section shall be accorded by a resolution passed at a meeting of the Board and not otherwise; and the consent of the Board required under sub-section (1) shall not be deemed to have been given within the meaning of that sub-section unless the consent is accorded before the contract is entered into or within three months of the date on which it was entered into.

(5) If consent is not accorded to any contract under this section, anything done in pursuance of the contract shall be voidable at the option of the Board.

(6) Nothing in this section shall apply to any case where the consent has been accorded to the contract before the commencement of the Companies (Amendment) Act, 1959."

108. In section 298 of the principal Act, the words "notwithstanding anything contained in this Act," shall be omitted. Amendment  
of section  
298.

109. In section 299 of the principal Act, after sub-section (5), the following sub-section shall be inserted, namely:— Amendment  
of section  
299.

"(6) Nothing in this section shall apply to any contract or arrangement entered into or to be entered into between two companies where a director of the one company is a member of the other company holding not more than two per cent. of the paid-up share capital in the other company."

110. In section 300 of the principal Act, in sub-section (2), in clause (d), for the words, brackets and figure "consists solely in his being a director of such company and the holder of not more than shares of such number or value therein as is requisite to qualify him for appointment as a director thereof, he having been nominated as such director by the company referred to in sub-section (1)", the following words, brackets and figures shall be substituted, namely:— Amendment  
of section  
300.

"consists solely—

(i) in his being a director of such company and the holder of not more than shares of such number or value

therein as is requisite to qualify him for appointment as a director thereof, he having been nominated as such director by the company referred to in sub-section (1), or

(ii) in his being a member holding not more than two per cent. of its paid-up share capital".

5

Amendment  
of section  
301.

111. In section 301 of the principal Act, for sub-sections (1), (2) and (3), the following sub-sections shall be substituted, namely:—

“(1) Every company shall keep one or more registers in which shall be entered separately particulars of all contracts or arrangements to which section 297 or section 299 applies, including the following particulars to the extent they are applicable in each case, namely:—

(a) the date of the contract or arrangement;

(b) the names of the parties thereto;

(c) the principal terms and conditions thereof;

15

(d) in the case of a contract to which section 297 applies or in the case of a contract or arrangement to which sub-section (2) of section 299 applies, the date on which it was placed before the Board;

(e) the names of the directors voting for and against the contract or arrangement and the names of those remaining neutral.

(2) Particulars of every such contract or arrangement to which section 297 or, as the case may be, sub-section (2) of section 299 applies, shall be entered in the relevant register aforesaid within three days (exclusive of public holidays) of the meeting of the Board at which the contract or arrangement is approved, or the date of the contract or arrangement, whichever is later, and the register shall be placed before the next meeting of the Board and shall then be signed by all the directors present at that meeting.

(3) The register aforesaid shall also specify, in relation to each director of the company, the names of the firms and bodies corporate of which notice has been given by him under sub-section (3) of section 299.

35

(3A) Nothing in sub-sections (1), (2) and (3) shall apply—

(a) to any contract or arrangement for the sale, purchase or supply of any goods, materials or services if

the value of such goods, and materials or the cost of such services does not exceed one thousand rupees in the aggregate in any year; or

5 (b) in the case of a banking company, to any contract or arrangement (to which section 297, or as the case may be, section 299 applies) by the banking company for the collection of bills in the ordinary course of its business.”.

112. In section 302 of the principal Act, in sub-section (7), the words “or proposed resolution” and the words “or proposed contract” shall be omitted. Amendment of section 302.

113. In section 303 of the principal Act,—

Amendment of section 303.

(a) in sub-section (1), in clause (1) of the *Explanation*, for the words “whose instructions”, the words “whose directions or instructions” shall be substituted;

15 (b) in sub-section (2),—

(i) for the words “a return in the prescribed form”, the words “a return in duplicate in the prescribed form” shall be substituted;

20 (ii) for the words “a notification in the prescribed form”, the words “a notification in duplicate in the prescribed form” shall be substituted;

(iii) the following proviso shall be added at the end, namely:—

25 “Provided that the notification of any change in any of the particulars contained in the register shall be sent within twenty-eight days of the close of the year during which the change occurred.”.

114. For section 305 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 305.

30 “305. (1) Every director, managing director, managing agent, secretaries and treasurers, manager or secretary of any company, who is appointed to, or relinquishes, the office of director, managing director, managing agent, secretaries and treasurers, manager or secretary of any other body corporate, shall, within twenty days of his appointment to, or as the case may be, relinquishment of, such office, disclose to the company aforesaid the particulars relating to the office in the other body corporate which are required to be specified under sub-section (1) of section 303; and if he fails to do so, he shall be punishable with fine which may extend to five hundred rupees.

Duty of directors, etc., to make disclosure.

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(2) The provisions of sub-section (1) shall also apply to a person deemed to be a director of the company by virtue of the *Explanation* to sub-section (1) of section 303 when such person is appointed to, or relinquishes, any of the offices in the other body corporate referred to in sub-section (1)."

5

Amendment  
of section  
307.

115. In section 307 of the principal Act, after sub-section (10), the following sub-section shall be inserted, namely:—

"(11) The provisions of this section and section 308 shall apply to managing agents, secretaries and treasurers and managers as they apply to directors."

10

Amendment  
of section  
309.

116. In section 309 of the principal Act,—

(a) for sub-sections (2) and (3), the following sub-sections shall be substituted, namely:—

"(2) A director may receive remuneration by way of a fee for each meeting of the Board, or a committee thereof, attended by him.

(3) A director who is either in the whole-time employment of the company or a managing director may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other:

Provided that such remuneration shall not exceed five per cent. of the net profits for one such director, and if there is more than one such director, ten per cent. for all of them together."

25

(b) after sub-section (5), the following sub-sections shall be inserted, namely:—

"(5A) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.

(5B) The company shall not waive the recovery of any sum refundable to it under sub-section (5A) unless permitted by the Central Government."

35



117. In section 310 of the principal Act, for the words "In the case of a public company, or a private company which is a subsidiary of a public company, an amendment of any provision relating to the remuneration of any director including a managing or whole-time director, which purports to increase", the words "In the case of a public company, or a private company which is a subsidiary of a public company, any provision relating to the remuneration of any director including a managing or whole-time director, or any amendment thereof, which purports to increase" shall be substituted.

Amendment  
of section  
310.

118. In section 313 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment  
of section  
313.

"(2) An alternate director appointed under sub-section (1) shall not hold office as such for a period longer than that permissible to the original director in whose place he has been appointed and shall vacate office if and when the original director returns to the State in which meetings of the Board are ordinarily held."

119. In section 314 of the principal Act,—

Amendment  
of section

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

314.

"(1) Except with the previous consent of the company accorded by a special resolution,—

(a) no director of a company shall hold any office or place of profit, and

(b) no partner or relative of such a director, no firm in which such a director or relative is a partner, no private company of which such a director is a director or member, and no director, managing agent, secretaries and treasurers, or manager of such a private company shall hold any office or place of profit carrying a total monthly remuneration of five hundred rupees or more,

except that of managing director, managing agent, secretaries and treasurers, manager, legal or technical adviser, banker or trustee for the holders of debentures of the company,—

(i) under the company; or

(ii) under any subsidiary of the company, unless the remuneration received from such subsidiary in respect of such office or place of profit is paid over to the company or its holding company:

Provided that where a relative of a director or a firm in which such a relative is a partner, is appointed to an office or place of profit under the company or a subsidiary thereof without the knowledge of the director, the consent of the company may be obtained within three months from the date of the appointment; and if such consent is not obtained within that period or is refused, the relative or the firm shall be deemed to have vacated his or its office or place on and from the date of expiry of that period and shall be liable to refund to the company any remuneration drawn by him or it for the period immediately preceding that date. 5 10

*Explanation.*—For the purpose of this sub-section, a special resolution according consent shall be necessary for every appointment in the first instance to an office or place of profit and to every subsequent appointment to such office or place of profit on a higher remuneration not covered by the special resolution, except where an appointment on a time scale has already been approved by the special resolution.”; 15

(b) after sub-section (2), the following sub-section shall be inserted, namely:— 20

“(2A) Every individual, firm, private company or other body corporate proposed to be appointed to any office or place of profit to which this section applies shall, before or at the time of such appointment, declare in writing whether he or it is or is not connected with a director of the company in any of the ways referred to in sub-section (1).”;

(c) in sub-section (3),—

(i) the words “in a company” shall be omitted;

(ii) in clause (a), for the words “obtains anything”, the words “obtains from the company anything” shall be substituted; 30

(iii) in clause (b), for the words “obtains anything”, the words “obtains from the company anything” shall be substituted. 35

120. Section 315 of the principal Act shall be omitted.

Omission of  
section 315.  
Amendment  
of section  
316.

121. In section 316 of the principal Act,—

(a) in sub-section (1),—

5 (i) for the words "No company", the words "No public company and no private company which is a subsidiary of a public company," shall be substituted;

(ii) for the words "any other company", the words and brackets "any other company (including a private company which is not a subsidiary of a public company)" shall be substituted;

(b) in sub-section (2),—

(i) for the words "A company", the words "A public company or a private company which is a subsidiary of a public company" shall be substituted;

15 (ii) for the words "other company", the words and brackets "other company (including a private company which is not a subsidiary of a public company)" shall be substituted;

20 (c) in sub-section (3), for the words "two companies", the words "two companies of which each one or at least one is a public company or a private company which is a subsidiary of a public company" shall be substituted, and for the words "this Act" occurring for the second time, the words, brackets and figures "the Companies (Amendment) Act, 1959," shall be substituted.

122. In section 317 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

Amendment  
of section  
317.

"(4) This section shall not apply to a private company unless it is a subsidiary of a public company."

30 123. In section 318 of the principal Act, in sub-section (3), in clause (a), the words "secretaries and treasurers," shall be omitted.

Amendment  
of section  
318.

124. After section 325 of the principal Act, the following section shall be inserted, namely:—

Insertion of  
new section  
325A.

35 "325A. After the commencement of the Companies (Amendment) Act, 1959, no company shall appoint or employ as its managing agent any body corporate which is a subsidiary of another body corporate."

Subsidiary of  
a body cor-  
porate not to  
be appointed  
as managing  
agent.

125. In section 342 of the principal Act,—

Amendment  
of section  
342.

40 (a) in sub-section (1), for the words "resign his office with effect from such date as may be specified in the notice", the

words, brackets and figure "resign his office as from such date as may be specified in the notice but such resignation shall not be effective until it is accepted by the company under sub-section (7)" shall be substituted;

(b) In sub-section (2), for the words, brackets and figure 5  
"but his resignation shall not be effective until it is considered as provided in sub-section (3)", the words "but the managing agent shall not be absolved from liability to the company for his acts whether of commission or omission, during the period of his managing agency" shall be substituted; 10

(c) for sub-sections (3), (4) and (5), the following sub-sections shall be substituted, namely:—

"(3) When notice of resignation is given as aforesaid, the Board shall require the managing agent within such time as may be fixed by it or such further time as may be 15  
allowed by it, to prepare a report on the state of affairs of the company as on the date specified in the notice of resignation or such subsequent date as the Board may think suitable, not being later than that on which the managing agent ceases to act as such under sub-section (2), together 20  
with a balance-sheet made out as on that date and a profit and loss account for the period commencing from the date upto which the last such account was prepared and ending with the date on which the managing agent ceases to act as such. 25

(4) In case of default by the managing agent in complying with the requisition of the Board under sub-section (3), the Board shall itself cause a report on the state of affairs of the company as on the date specified in the notice of resignation or such subsequent date as the Board may think 30  
suitable, not being later than that on which the managing agent ceases to act as such under sub-section (2), together with a balance-sheet made out as on that date and a profit and loss account for the period specified in sub-section (3). 35  
to be prepared.

(5) The Board shall also obtain a report from the auditors of the company on such balance-sheet and profit and loss account in accordance with sections 227, 228 and 229 and place the managing agent's resignation together with the report on the state of the company's affairs, balance- 40  
sheet, profit and loss account and auditors' report mentioned above, before the company in general meeting.

(6) In relation to any report made by the auditors as aforesaid, sections 230 to 233 shall apply in like manner as they apply in relation to auditors' report referred to therein.

5 (7) The company in general meeting may, by a resolution, accept the resignation or take such other action with reference thereto as it may deem fit."

126. For section 343 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 343.

10 "343. (1) The managing agent of a company shall not transfer his office to another person or enter into any agreement or arrangement with another person by or under which the managing agent parts with, or which has the effect of transferring, his right to manage the whole or substantially the whole of the affairs of the company in favour of or to that other person unless approval of the company in general meeting and also of the Central Government has been accorded to such transfer, agreement or arrangement.

Transfer of office by managing agent.

20 (2) If the other person and the managing agent referred to in sub-section (1) contravene the provisions of that sub-section, that other person and the managing agent, and where the managing agent is a firm, every partner in the firm and where the managing agent is a body corporate, every director of the body corporate, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both."

127. In section 346 of the principal Act, in sub-section (1),—

Amendment of section 346.

30 (a) for the words "before such expiry", the words "before the expiry of the six months aforesaid or where further time has been allowed by the Central Government, before the expiry of that time" shall be substituted;

(b) in the *Explanation*, after clause (c), the following words shall be inserted as a separate paragraph, namely:—

35 "and where the managing agent, being a body corporate, is at the commencement of the Companies (Amendment) Act, 1959, a subsidiary of another body corporate, includes a change in the constitution of that other body corporate within the meaning of clause (a), clause (b) or clause (c)."

Amendment  
of section  
348.

128. Section 348 of the principal Act shall be re-numbered as sub-section (1) of that section and—

(a) in that sub-section as so renumbered, the words "save as otherwise expressly provided in this Act," shall be omitted;

(b) after that sub-section as so re-numbered, the following 5 sub-sections shall be inserted, namely:—

"(2) For the purposes of this section, any payment made by way of remuneration to any of the following persons shall be deemed to be included in the remuneration of the managing agent:— 10

(a) where the managing agent of the company is a firm, every partner in the firm;

(b) where the managing agent of the company is a public company, every director of that public company;

(c) where the managing agent of the company is a 15 private company, every director and member of that private company.

(3) Nothing contained in sub-section (1) shall be deemed to affect the operation of sections 352, 354 and 356 to 360."

Amendment  
of section  
349.

129. In section 349 of the principal Act,— 20 .

(a) in sub-section (3), in clause (c), for the words "profits from the sale", the words "profits of a capital nature including profits from the sale" shall be substituted;

(b) in sub-section (4),—

(i) for clause (j), the following clause shall be substituted, namely:— 25

"(j) outgoings inclusive of contributions made under clause (e) of sub-section (1) of section 293;"

(ii) in clause (l), for the words and brackets "the loss (not including any loss of a capital nature) incurred", the 30 words, brackets, letters and figure "the loss [not including any loss specified in clauses (d) and (e) of sub-section (5)] computed according to this section and incurred" shall be substituted;

(iii) after clause (n), the following clause shall be 35 inserted, namely:—

"(o) debts considered bad and written off or adjusted during the year of account.";

(c) in sub-section (5), after clause (c), the following clauses shall be inserted, namely:—

5 “(d) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof;

10 (e) loss on sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or in part, of buying and selling of such property or assets.”.

130. For section 350 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 350.

15 “350. The amount of depreciation to be deducted in pursuance of clause (k) of sub-section (4) of section 349 shall be the amount calculated with reference to the written down value of the assets as shown by the books of the company at the end of the financial year expiring at the commencement of this Act or immediately thereafter and at the end of each subsequent financial year, at the rate specified for the assets by the Indian Income-tax Act, 1922, and the rules made thereunder for the time being in force, as normal depreciation including therein extra and multiple shift allowances but not including therein any special, initial or other depreciation or any development rebate, whether allowed by that Act or those rules or otherwise.”.

Ascertainment of depreciation.

11 of 1922.

25 131. In section 356 of the principal Act, in sub-section (2), in clause (a), the words “or any other company managed by the managing agent” shall be added at the end.

Amendment of section 356.

30 132. In section 358 of the principal Act, in sub-section (2), after the words “not connected with that of the company”, the words “or any other company managed by the managing agent” shall be inserted.

Amendment of section 358.

133. In section 360 of the principal Act,—

Amendment of section 360.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

35 “(1) A contract between a company and its managing agent or an associate of the managing agent,—

(a) for the sale, purchase or supply of any property, movable or immovable, or for the supply or rendering of any service other than that of managing agent; or

(b) for the underwriting of any shares or debentures to be issued or sold by the company;

shall not be valid as against the company unless the company approves of the contract by a special resolution passed by it either before the date of the contract or at any time within three months next after that date.”;

(b) in sub-section (2),—

(i) in clause (a), after the words “proposed to be entered into”, the words “or entered into” shall be inserted;

(ii) in clause (b), for the word “goods”, the word “property” shall be substituted;

(c) in sub-section (4), for the words “or services”, the words “or the supply or rendering of services” shall be substituted, and the word “calendar” shall be omitted.

Amendment  
of section  
363.

134. Section 363 of the principal Act shall be re-numbered as sub-section (1) of that section and—

(a) in sub-section (1) as so re-numbered, for the words “shall account to the company for such sum as if he held it in trust for the company”, the words “shall refund such sum to the company and until such sum is so refunded, hold it in trust for the company” shall be substituted;

(b) after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

“(2) The company shall not waive the recovery of any sum refundable to it under sub-section (1) unless permitted by the Central Government.”.

Amendment  
of section  
369.

135. In section 369 of the principal Act,—

(a) in sub-section (1), for the words “shall make”, the words “shall, directly or indirectly, make” shall be substituted;

(b) after sub-section (2), the following *Explanation* shall be inserted, namely:—

“*Explanation.*—Credit referred to in sub-section (2) is confined to any cash advance given by way of a permanent advance or imprest for facilitating the carrying on of the company’s business, transactions on such advance or imprest accounts being settled as far as possible on a monthly basis.”.



136. In section 370 of the principal Act,—

(a) the *Explanation* to sub-section (1) shall be numbered and lettered as sub-section (1A) and in sub-section (1A) as so numbered and lettered,—

5 (i) for the words “For the purposes of this sub-section”, the words, brackets and figure “For the purposes of sub-section (1)” shall be substituted;

(ii) at the end of clause (ii), the word “or” shall be added;

10 (iii) after clause (ii), the following clauses shall be inserted, namely:—

“(iii) if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies is exercised or controlled by the same individual or body corporate; or

15 (iv) if the holding company of the one body is under the same management as the other body within the meaning of clause (i), clause (ii) or clause (iii), or

20 (v) if one or more directors of the one body while holding, whether by themselves or together with their relatives, the majority of shares in that body also hold, whether by themselves or together with their relatives, the majority of shares in the other body.”;

25 (b) for sub-section (2), the following sub-sections shall be substituted, namely:—

“(2) Nothing contained in sub-section (1) shall apply to—

(a) any loan made—

30 (i) by a holding company to its subsidiary, or

(ii) by the managing agent or secretaries and treasurers to any company under his or their management, or

35 (iii) by a banking company in the ordinary course of its business;

(b) any guarantee given or any security provided—

(i) by a holding company in respect of any loan made to its subsidiary, or

(ii) by the managing agent or secretaries and treasurers in respect of any loan made to any company under his or their management; or

(iii) by a banking company in the ordinary course of its business.

(3) Nothing in this section shall apply to a book debt unless the transaction represented by the book debt was from its inception in the nature of a loan or an advance.

(4) References in this section to a director shall be deemed to include references to a person deemed to be a director by virtue of the *Explanation* to sub-section (1) of section 303.”

15

Insertion of new section 370A.

137. After section 370 of the principal Act, the following section shall be inserted, namely:—

Provisions as to certain loans which could not have been made if sections 369 and 370 were in force.

“370A. Where any loan made, guarantee given or security provided by a company and outstanding at the commencement of the Companies (Amendment) Act, 1959, could not have been made, given or provided if section 369 or section 370 had been in force at the time when such loan was made, guarantee given or security provided, the company shall, within six months from the commencement of that Act or such further time as the Central Government may grant on the application of the company for that purpose, enforce the repayment of the loan made, or in connection with which the guarantee was given or the security was provided, notwithstanding any agreement to the contrary.”

Substitution of new section for section 372.

138. For section 372 of the principal Act, the following section shall be substituted, namely:—

Purchase by company of shares, etc., of other companies.

“372. (1) A company (hereafter in this section and section 373 referred to as the investing company) shall not be entitled to subscribe for, or purchase, the shares or debentures of any other body corporate except to the extent and except in accordance with the restrictions and conditions specified in this section.

(2) The Board of directors of the investing company shall be entitled to invest in any shares or debentures of any other

body corporate up to ten per cent. of the subscribed capital of such other body corporate:

5 Provided that the aggregate of the investments so made by the Board in all other bodies corporate shall not exceed thirty per cent. of the subscribed capital of the investing company:

Provided further that the aggregate of the investments made in all other bodies corporate in the same group shall not exceed twenty per cent. of the subscribed capital of the investing company.

10 (3) In computing at any time the percentages specified in sub-section (2) and the provisos thereto, the aggregate of the investments made by the investing company in other body or bodies corporate [whether before or after the commencement of the Companies (Amendment) Act, 1959] up to that time  
15 shall be taken into account.

(4) The investing company shall not make any investment in the shares or debentures of any other body corporate in excess of the limits specified in sub-section (2) and the provisos thereto, unless the investment is sanctioned by a resolution of  
20 the investing company and unless further it is approved by the Central Government.

(5) No investment shall be made by the Board of directors of an investing company in pursuance of sub-section (2), unless it is sanctioned by a resolution passed at a meeting of the Board  
25 with the consent of all the directors present at the meeting, except those not entitled to vote thereon, and unless further notice of the resolution to be moved at the meeting has been given to every director in the manner specified in section 286.

(6) Every investing company shall keep a register of all  
30 investments made by it in shares and debentures of any other body or bodies corporate (whether in the same group or not and whether in the case of a body corporate in the same group, such investments were made before or after that body came within the same group as the investing company), showing in  
35 respect of each investment the following particulars:—

(a) the name of the body corporate in which the investment has been made;

(b) the date on which the investment has been made;

(c) where the body corporate is in the same group as  
40 the investing company, the date on which the body corporate came in the same group;

(d) the names of all bodies corporate in the same group as the investing company.

(7) Particulars of every investment to which sub-section (5) applies shall be entered in the register aforesaid within three days of the making thereof or in the case of investments made before the commencement of this Act, within six months from the commencement of the Companies (Amendment) Act, 1959, or such further time as the Central Government may grant on an application by the company in that behalf.

(8) If default is made in complying with the provisions of sub-section (6) or (7), the company, and every officer who is in default, shall be punishable with fine which may extend to five hundred rupees.

(9) The register aforesaid shall be kept at the registered office of the investing company, and shall be open to inspection at such office; and extracts may be taken therefrom and copies thereof may be required, by any member of the company to the same extent, in the same manner, and on payment of the same fees as in the case of the register of members of the company; and the provisions of section 163 shall apply accordingly.

(10) Every investing company shall annex to each balance-sheet prepared by it after the commencement of the Companies (Amendment) Act, 1959, a statement showing the bodies corporate (indicating separately the bodies corporate in the same group) in the shares or debentures of which investments have been made by it (including all investments, whether existing or not, made subsequent to the date as at which the previous balance-sheet was made out) and the nature and extent of the investments so made in each such body corporate.

(11) For the purposes of this section, a body corporate shall be deemed to be in the same group as the investing company—

(a) if the body corporate is the managing agent of the investing company; or

(b) if the body corporate and the investing company should, in virtue of sub-section (1A) of section 370, be deemed to be under the same management.

(12) The provisions of this section [except the first proviso to sub-section (2) and sub-section (10)] shall apply to an investment company, that is to say, to a company whose principal business is the acquisition of shares, stock, debentures or other securities.

(13) This section shall not apply—

(a) to any banking or insurance company;

(b) to a private company, unless it is a subsidiary of a public company;

5 (c) to investments by a holding company in its subsidiary; or

(d) to investments by a managing agent or secretaries and treasurers in a company managed by him or them.”.

139. In section 373 of the principal Act,—

Amendment  
of section  
373.

10 (a) after the words “made by a company”, the words “in any other body corporate in the same group” shall be inserted; and

15 (b) for the words “the proviso to that sub-section”, the words “the second proviso to that sub-section” shall be substituted.

140. In section 377 of the principal Act,—

Amendment  
of section

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

20 “(1A) Nothing contained in sub-section (1), or in any other provision of this Act, or in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting, or by its Board of directors shall be deemed to  
25 authorise the managing agent to appoint the chairman of the Board of directors.”;

(b) after sub-section (5), the following sub-section shall be inserted, namely:—

30 “(6) Where from any cause the total number of directors is so reduced as not to exceed five, but the number of directors appointed by the managing agent exceeds, after such reduction, the number authorised under sub-section  
35 (1), the managing agent shall determine which of them shall continue to hold office and intimate the choice made by him to the company before the expiry of one month from the happening of the cause and only the director so chosen shall continue to hold office as director with effect from such expiry:

Provided that if no choice is made by the managing agent as aforesaid, all the directors appointed by him shall with effect from such expiry, be deemed to have vacated their offices.”.

- Amendment of section 378.** 141. In section 378 of the principal Act, the proviso shall be 5 omitted.
- Amendment of section 379.** 142. In section 379 of the principal Act, after the words “subject as aforesaid”, the words “and unless the context otherwise requires” shall be inserted.
- Amendment of section 381.** 143. In section 381 of the principal Act, the word “annual” 10 occurring at both the places shall be omitted.
- Amendment of section 384.** 144. In section 384 of the principal Act, for the words “No public company, and no private company which is a subsidiary of a public company,”, the words “No company” shall be substituted.
- Amendment of section 386.** 145. In section 386 of the principal Act, sub-section (5) shall be 15 omitted.
- Amendment of section 387.** 146. In section 387 of the principal Act,—  
 (a) the words “not exceeding five,” shall be omitted;  
 (b) the following proviso shall be added at the end, namely:—  
 20  
 “Provided that such remuneration shall not exceed in the aggregate five per cent. of the net profits.”.
- Amendment of section 388.** 147. In section 388 of the principal Act, for the figures “310”, the figures “269, 310” shall be substituted.
- Insertion of new section 388A.** 148. After section 388 of the principal Act, the following section 25 shall be inserted, namely:—  
 “388A. Sections 386, 387 and 388 shall not apply to a private company unless it is a subsidiary of a public company.”.
- Sections 386 to 388 not to apply to certain private companies.**
- Amendment of section 391.** 149. In section 391 of the principal Act, in sub-section (2), after the words “where proxies are allowed”, the words and figures 30 “under the rules made under section 643” shall be inserted.
- Amendment of section 396.** 150. In section 396, in sub-section (1), for the words “national interest”, the words “public interest” shall be substituted.
- Amendment of section 398.** 151. In section 398 of the principal Act, in sub-section (1), in clause (b), after the words “secretaries and treasurers”, the words “or 35 manager” shall be inserted.

152. In section 407 of the principal Act, in sub-section (1), in clause (b), for the words "the order terminating the agreement", the words "the order terminating or setting aside the agreement" shall be substituted. Amendment  
of section  
407.

5 153. In section 408 of the principal Act,—

Amendment  
of section  
408.

(a) in sub-section (1),—

(i) the words "being members of the company," shall be omitted;

10 (ii) for the words "two hundred", the words "one hundred" shall be substituted;

(b) in sub-section (2), for the words "two members of the company", the words "two persons" shall be substituted;

(c) after sub-section (3), the following sub-sections shall be inserted, namely:—

15 " (4) A person appointed under sub-section (1) to hold office as a director or a person directed under sub-section (2) to hold office as an additional director, shall not be required to hold any qualification shares nor his period of office shall be liable to determination by retirement of  
20 directors by rotation; but any such director or additional director may be removed by the Central Government from his office at any time and another person may be appointed by that Government in his place to hold office as a director or, as the case may be, an additional director.

25 (5) No change in the Board of directors made after a person is appointed or directed to hold office as a director or additional director under this section shall, so long as such director or additional director holds office, have effect unless confirmed by the Central Government."

30 154. In section 409 of the principal Act, in sub-section (1),—

Amendment  
of section  
409.

(a) for the words "or the secretaries and treasurers", the words "the secretaries and treasurers or the manager" shall be substituted;

35 (b) for the words "no resolution passed or action taken", the words "no resolution passed or that may be passed or no action taken or that may be taken" shall be substituted.

155. In section 411 of the principal Act, in clause (b), for the figures and word "346, 352, 408, or 409", the figures and word "346 or 352" shall be substituted. Amendment  
of section  
411.

Amendment  
of section  
417.

156. In section 417 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Any money or security deposited with a company by any of its employee in pursuance of his contract of service with the company shall be kept or deposited by the company within 5 fifteen days from the date of deposit—

(a) in a post office savings bank account, or

(b) in a special account to be opened by the company for the purpose in the State Bank of India or in a Scheduled Bank, or 10

(c) where the company itself is a Scheduled Bank, in a special account to be opened by the company for the purpose either in itself or in the State Bank of India or in any other Scheduled Bank.”

Amendment  
of section  
418.

157. In section 418 of the principal Act,— 15

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company 20 or by the employees) or received or accruing by way of interest or otherwise to such fund shall, within fifteen days from the date of contribution, receipt or accrual, as the case may be, either—

(a) be deposited— 25

(i) in a post office savings bank account, or

(ii) in a special account to be opened by the company for the purpose in the State Bank of India or in a Scheduled Bank, or

(iii) where the company itself is a Scheduled 30 Bank, in a special account to be opened by the company for the purpose either in itself or in the State Bank of India or in any other Scheduled Bank; or

(b) be invested in the securities mentioned or refer- 35 red to in clauses (a) to (e) of section 20 of the Indian Trusts Act, 1882.”;



(b) in sub-section (4),—

(i) the word “separate” shall be omitted;

(ii) after the words “to the trustees”, the words “within fifteen days from the date of collection” shall be inserted.

5     **158.** In section 426 of the principal Act, in sub-section (1), in clause (g), for the words “any other creditor who is not a past or present member of the company”, the words “any creditor claiming otherwise than in the character of a past or present member of the company” shall be substituted. Amendment  
of section  
426.

10    **159.** In section 439 of the principal Act, in sub-section (5), for the words, brackets and letters “clauses (b), (c) and (e)”, the words, brackets and letters “clauses (b), (c), (d), (e) and (f)” shall be substituted. Amendment  
of section  
439.

15    **160.** In section 445 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:— Amendment  
of section  
445.

“**(1A)** In computing the period of one month from the date of the making of a winding up order under sub-section (1), the time requisite for obtaining a certified copy of the order shall be excluded.”.

20    **161.** In section 446 of the principal Act,— Amendment  
of section  
446.  
      (a) for sub-section (2), the following sub-section shall be substituted, namely:—

25       “**(2)** The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of—

      (a) any suit or proceeding by or against the company;

30       (b) any claim made by or against the company (including claims by or against any of its branches in India);

      (c) any application made under section 391 by or in respect of the company;

35       (d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company;

whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1959.”; 5

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.”.

Amendment  
of section  
448.

162. In section 448 of the principal Act,—

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The Central Government may appoint one or more Deputy or Assistant Official Liquidators to assist the Official Liquidator in the discharge of his functions.”; 15

(b) in sub-section (2), the words, brackets, figure and letter “and as including references to Deputy or Assistant Official Liquidators appointed under sub-section (1A)” shall be inserted at the end. 20

Amendment  
of section  
454.

163. In section 454 of the principal Act, after sub-section (5), the following sub-section shall be inserted, namely:—

“(5A) The Court by which the winding up order is made or the provisional liquidator is appointed, may take cognizance of an offence under sub-section (5) upon receiving a complaint of facts constituting such offence and try the offence itself in accordance with the procedure laid down in the Code of Criminal Procedure, 1898, for the trial of summons cases by magistrates.”. 25

5 of 1898.

Amendment  
of section  
455.

164. In section 455 of the principal Act, in sub-section (1), after the words “six months from the date of the order”, the words “or such extended period as may be allowed by the Court” shall be inserted. 30

Amendment  
of section  
456.

165. In section 456 of the principal Act,—

(a) in sub-section (1), after the words “the liquidator”, the words “or the provisional liquidator, as the case may be,” shall be inserted; 35

(b) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) For the purpose of enabling the liquidator or the provisional liquidator, as the case may be, to take into his custody or under his control, any property, effects or actionable claims to which the company is or appears to be entitled, the liquidator or the provisional liquidator, as the case may be, may by writing request the Chief Presidency Magistrate or the District Magistrate within whose jurisdiction such property, effects or actionable claims or any books of account or other documents of the company may be found, to take possession thereof, and the Chief Presidency Magistrate or the District Magistrate may thereupon after such notice as he may think fit to give to any party, take possession of such property, effects, actionable claims, books of account or other documents and deliver possession thereof to the liquidator or the provisional liquidator.

“(1B) For the purpose of securing compliance with the provisions of sub-section (1A), the Chief Presidency Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may in his opinion be necessary.”.

166. In section 457 of the principal Act, in sub-section (2), after clause (i), the following clause shall be inserted, namely:— Amendment of section 457.

“(ia) to inspect the records and returns of the company on the files of the Registrar without payment of any fee;”.

167. In section 463 of the principal Act, after the words “imposed on him by this Act”, the words and figures “or by the Indian Companies Act, 1913” shall be inserted. Amendment of section 463.

168. In section 464 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:— Amendment of section 464.

“(1) (a) The Court may, at the time of making an order for the winding up of a company or at any time thereafter, direct that there shall be appointed a committee of inspection to act with the liquidator.

(b) Where a direction is given by the Court as aforesaid, the liquidator shall, within two months from the date of such direction, convene a meeting of the creditors of the company (as ascertained from its books and documents) for

the purpose of determining who are to be members of the committee.”;

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The liquidator shall, within fourteen days from the date of the creditors’ meeting or such further time as the Court in its discretion may grant for the purpose, convene a meeting of the contributories to consider the decision of the creditors’ meeting with respect to the membership of the committee; and it shall be open to the meeting of the contributories to accept the decision of the creditors’ meeting with or without modifications or to reject it.”;

(c) in sub-section (3), the words “whether there shall be a committee of inspection; and, if so,” shall be omitted.

Amendment  
of section  
465.

169. In section 465 of the principal Act, in sub-section (3), the words “and, failing such appointment, at least once a month,” shall be omitted.

Amendment  
of section  
468.

170. In section 468 of the principal Act,—

(a) for the words “or officer”, the words “officer or other employee” shall be substituted;

(b) for the words “in his hands”, the words “in his custody or under his control” shall be substituted.

\*Amendment  
of section  
477.

171. In section 477 of the principal Act, after sub-section (4), the following sub-sections shall be inserted, namely:—

“(5) If, on his examination, any officer or person so summoned admits that he is indebted to the company, the Court may order him to pay to the provisional liquidator or, as the case may be, the liquidator at such time and in such manner as to the Court may seem just, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination.

(6) If, on his examination, any such officer or person admits that he has in his possession any property belonging to the company, the Court may order him to deliver to the provisional liquidator or, as the case may be, the liquidator, that property or any part thereof, at such time, in such manner and on such terms as to the Court may seem just.

5 of 1908.

(7) Orders made under sub-sections (5) and (6) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908, respectively.

5 (8) Any person making any payment or delivery in pursuance of an order made under sub-section (5) or sub-section (6) shall by such payment or delivery be, unless otherwise directed by such order, discharged from all liability whatsoever in respect of such debt or property."

10 172. In section 481 of the principal Act, in sub-section (1), after the words "completely wound up", the words "or when the Court is of the opinion that the liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason whatsoever and it is just and reasonable in the circumstances  
15 of the case that an order of dissolution of the company should be made" shall be inserted. Amendment of section 481.

173. In section 488 of the principal Act, in sub-section (2), for clause (b), the following clause shall be substituted, namely:— Amendment of section 488.

20 "(b) it is accompanied by a copy of the report of the auditors of the company (prepared, as far as circumstances admit, in accordance with the provisions of this Act) on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the  
25 declaration and the balance-sheet of the company made out as on the last-mentioned date and also embodies a statement of the company's assets and liabilities as at that date."

174. In section 512 of the principal Act, in sub-section (1), in clause (a), for the words, brackets and figures "clauses (i) to (iv) of sub-  
30 section (2)", the words, brackets, figure and letters "clauses (a) to (d) of sub-section (1)" shall be substituted. Amendment of section 512.

175. In section 515 of the principal Act,—

(a) in sub-section (1), for the words "the Court may appoint a liquidator", the words "the Court may appoint the  
35 Official Liquidator or any other person as a liquidator" shall be substituted; Amendment of section 515.

(b) for sub-section (2), the following sub-sections shall be substituted, namely:—

40 "(2) The Court may, on cause shown, remove a liquidator and appoint the Official Liquidator or any other person as a liquidator in place of the removed liquidator.

(3) The Court may also appoint or remove a liquidator on the application made by the Registrar in this behalf.

(4) If the Official Liquidator is appointed as liquidator under the proviso to sub-section (2) of section 502 or under this section, the remuneration to be paid to him shall be fixed by the Court and shall be credited to the Central Government."

Omission of section 521.

176. Section 521 of the principal Act shall be omitted.

Amendment of section 524.

177. In section 524 of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely:— 10

"(3) The Court may appoint the Official Liquidator as a liquidator under sub-section (1) or to fill any vacancy occasioned under sub-section (2).

(4) The Court may also appoint or remove a liquidator on an application made by the Registrar in this behalf." 15

Amendment of section 529.

178. In section 529 of the principal Act, in sub-section (2), the following proviso shall be inserted, namely:—

"Provided that if a secured creditor instead of relinquishing his security and proving for his debt proceeds to realise his security, he shall be liable to pay the expenses incurred by the liquidator (including a provisional liquidator, if any) for the preservation of the security before its realization by the secured creditor."

Amendment of section 530.

179. In section 530 of the principal Act, in sub-section (1), in clause (b), for the brackets and words "(including wages payable for time or piece work and salary earned wholly or in part by way of commission)", the brackets, words, figures and letter "(including wages payable for time or piece work, salary earned wholly or in part by way of commission or compensation payable to any workman under any of the provisions of Chapter VA of the Industrial Disputes Act, 1947)" shall be substituted. 25 30

14 of 1947.

Insertion of new section 531A.

180. After section 531 of the principal Act, the following section shall be inserted, namely:—

Avoidance of voluntary transfer.

"531A. Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before 35

the presentation of a petition for winding up by or subject to the supervision of the Court or the passing of a resolution for voluntary winding up of the company, shall be void against the liquidator.”.

5 181. In section 535 of the principal Act, in sub-section (4), for the words “the company shall be deemed to have adopted it”, the words “he shall be deemed to have adopted it” shall be substituted. Amendment of section 535.

182. In section 537 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:— Amendment of section 537.

10 “(2) Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government.”.

183. In section 549 of the principal Act, in sub-section (1), for the words “the Central Government”, the words “the Supreme Court” shall be substituted. Amendment of section 549.

184. In section 551 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:— Amendment of section 551.

20 “(1) If the winding up of a company is not concluded within one year after its commencement, the liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government, within one month of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in the prescribed form and containing the prescribed particulars 25 duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation,—

30 (a) in the case of a winding up by or subject to the supervision of the Court, in Court; and

(b) in the case of a voluntary winding up, with the Registrar :

35 Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 462 apply.” ;

(b) in sub-section (5), the following proviso shall be added at the end, namely:—

“Provided that if the liquidator makes wilful default in causing the statement referred to in sub-section (1) to be audited by a person qualified to act as auditor of the company, the liquidator shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”.

Amendment  
of section  
555.

185. In section 555 of the principal Act,—

10

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Where any company is being wound up, if the liquidator has in his hands or under his control any money representing—

15

(a) dividends payable to any creditor which had remained unpaid for six months after the date on which they were declared, or

(b) assets refundable to any contributory which have remained undistributed for six months after the date on which they became refundable,

the liquidator shall forthwith pay the said money into the public account of India in the Reserve Bank of India to be known as the Company's Liquidation Account.”;

(b) in sub-section (2), for the word “unclaimed”, the word “unpaid” shall be substituted.

Amendment  
of section  
582.

186. In section 582 of the principal Act, in clause (b), the words “at the time when the petition for winding up the partnership, association or company, as the case may be, is presented before the Court,” shall be inserted at the end.

30

Amendment  
of section  
595.

187. In section 595 of the principal Act, in clause (c), the word “advertisements” shall be omitted.

Amendment  
of section  
610.

188. In section 610 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “Any person may”, the words “Save as otherwise provided elsewhere in this Act, any person may” shall be substituted;

35



(ii) in clause (b), for the words "on payment of a fee of five rupees in the case of a certificate of incorporation, and of six annas for every one hundred words or fractional part thereof", the words "on payment in advance of a fee of five rupees in the case of a certificate of incorporation, and of one rupee for every one hundred words or fractional part thereof" shall be substituted ;

(b) sub-section (4) shall be omitted.

189. Section 611 of the principal Act shall be re-numbered as Amendment of section 611.  
10 sub-section (1) of that section and—

(a) in that sub-section as so re-numbered, after the proviso, the following further proviso shall be inserted, namely:—

"Provided further that in the case of resolutions to which section 192 applies, not more than one set of fee shall be required for the filing of more resolutions than one passed in the same meeting if such resolutions are filed with the Registrar at the same time.";

(b) after that sub-section as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) Any document required or authorised by this Act to be filed or registered, or any fact required or authorised by this Act to be registered, with the Registrar on payment of the fee specified therefor in Schedule X, may, without prejudice to any other liability, be filed or registered after the time, if any, specified in this Act for its filing or registration on payment of such fee not exceeding ten times the amount of the fee so specified as the Registrar may determine."

190. In Part XII, after section 614 of the principal Act, the 30 following section shall be inserted, namely:—  
Insertion of new section 614A in Part XII.

"614A. (1) Any Court trying an offence for a default in compliance with any provision of this Act which requires a company or its officers to file or register with, or deliver or send to, the Registrar, any return, account or other document, may at the time of sentencing, acquitting or discharging the accused, direct by order, if it thinks fit to do so, any officer or other employee of the company to file or register with, deliver or send to, the Registrar on payment of the fee required to be paid under section 611, such return, account or other document within such time as may be specified in the order.

Power of Court trying offences under the Act to direct the filing of documents with Registrar.

(2) Any officer or other employee of the company who fails to comply with an order of the Court under sub-section (1) shall be punishable with imprisonment for a term which may extend to six months."

Amendment  
of section  
616.

191. In section 616 of the principal Act, in clause (c), after the words "the provisions of", the words and figures "the Indian Electricity Act, 1910, or" shall be inserted. <sup>5</sup> of 1910.

Amendment  
of section  
617.

192. In section 617 of the principal Act,—

(a) for the words and figures "sections 618, 619 and 620", the words "this Act" shall be substituted; <sup>10</sup>

(b) for the words "share capital", the words "paid-up share capital" shall be substituted;

(c) the words "and includes a company which is a subsidiary of a Government company as thus defined" shall be added at the end. <sup>15</sup>

Substitution  
of new  
section for  
section 618.

Government  
companies  
not to have  
managing  
agents.

193. For section 618 of the principal Act, the following section shall be substituted, namely:—

"618. No Government company, whether formed before or after the 1st day of April, 1956, shall, after the commencement of the Companies (Amendment) Act, 1959, appoint or employ, or after the expiry of six months from such commencement, continue the appointment or employment of, any managing agent: <sup>20</sup>

Provided that where a company has become a Government company after the 1st day of April, 1956, nothing in this section shall prevent that company from continuing after the commencement of the Companies (Amendment) Act, 1959, the appointment or employment of a managing agent appointed or employed before such commencement." <sup>25</sup>

Insertion of  
new section  
619A.

194. After section 619 of the principal Act, the following section shall be inserted, namely:— <sup>30</sup>

Annual re-  
ports on  
Government  
companies.

"619A. (1) Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be— <sup>35</sup>

(a) prepared within three months of its annual general meeting before which the Audit report is placed under sub-section (5) of section 619; and

(b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and any comments upon, or supplement to, the audit report, made by the Comptroller and Auditor General of India.

(2) Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report, prepared under sub-section (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments or supplement referred to in sub-section (1).

(3) Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be—

(a) prepared within the time specified in sub-section (1); and

(b) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature with a copy of the audit report and comments or supplement referred to in sub-section (1)."

195. After section 620 of the principal Act, the following heading and section shall be inserted, namely:—

Insertion of  
new heading  
and new  
section 620A.

*'Modification of Act in its application to Nidhis and Mutual Benefit Societies.*

620A. (1) In this section, "Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

Power to  
modify Act  
in its appli-  
cation to  
Nidhis, etc.

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—

(a) shall not apply to any Nidhi or Mutual Benefit Society, or

(b) shall apply to any Nidhi or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification proposed to be issued under sub-section (1) shall be laid in draft before both Houses of Parliament for a period of not less than thirty days while they are in session and if within that period either House dis-  
 5  
 approves of the issue of the notification or approves of such issue only with modifications, the notification shall not be issued or as the case may require, shall be issued only with such modifications as may be agreed on by both the Houses.’

Amendment  
 of section  
 621.

196. In section 621 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:— 10

“(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, where the complainant under sub-  
 5 of 1898.  
 section (1) is the Registrar or a person authorised by the Central Government, the personal attendance of the complainant before the Court trying the offence shall not be necessary  
 15  
 unless the Court for reasons to be recorded in writing requires his personal attendance at the trial.”

Omission of  
 section 622.

197. Section 622 of the principal Act shall be omitted.

Insertion of  
 new sections  
 624A and  
 624B.

Power of  
 Central  
 Government  
 to appoint  
 company  
 prosecutors.

198. After section 624 of the principal Act, the following sections shall be inserted, namely:— 20

“624A. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the Central Government may appoint  
 5 of 1898.  
 generally, or in any case, or for any specified class of cases in any local area, one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act; and the per-  
 25  
 sons so appointed as company prosecutors shall have all the powers and privileges conferred by that Code on public prosecutors appointed by a State Government under section 492 of that Code.

Appeal  
 against  
 acquittal.

624B. Notwithstanding anything contained in the Code of  
 30  
 Criminal Procedure, 1898, the Central Government may, in any  
 5 of 1898.  
 case arising out of this Act, direct any company prosecutor or authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal  
 35  
 passed by any Court other than a High Court and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate Court.”

Amendment  
 of section  
 627.

199. In section 627 of the principal Act, in sub-section (1), after the words “by the Central Government”, the words, figures and

letter "or by a company prosecutor appointed under section 624A" shall be inserted.

200. After section 629 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 629A.

5 "629A. If a company contravenes any provision of this Act, for which no punishment is provided elsewhere in this Act, the company and every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees and where the contravention is a continuing one, with a  
10 further fine which may extend to fifty rupees for every day during which the contravention continues."

Penalty where no specific penalty is provided elsewhere in the Act.

201. In section 633 of the principal Act,—

Amendment of section 633.

(a) in sub-section (2),—

15 (i) for the words "any claim will or might be made against him", the words "any proceeding will or might be brought against him" shall be substituted;

20 (ii) for the words "under this section if it had been a Court before which proceedings against that person for negligence, default, breach of duty, misfeasance or breach of trust had been brought", the words, brackets and figure "if a proceeding against that person for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1)" shall be substituted;

25 (b) after sub-section (2), the following sub-section shall be inserted, namely:—

30 "(3) The Court shall not make any order under sub-section (1) or sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such order should not be made."

202. After section 637 of the principal Act, the following heading and section shall be inserted, namely:—

Insertion of new heading, and new section 637A.

*"Power to grant approval, etc., subject to conditions.*

35 637A. Where the Central Government is required or authorised by any provision of this Act—

Power of Central Government to accord approval, etc. subject to conditions

(a) to accord approval, consent, confirmation or recognition to, or in relation to, any matter;

(b) to give any direction in relation to any matter; or

(c) to grant any exemption in relation to any matter, then, in the absence of anything to the contrary contained in such or any other provision of this Act, the Central Government may accord, give or grant such approval, consent, confirmation, recognition, direction or exemption subject to such conditions, limitations or restrictions as it may think fit to impose.” 5

Omission  
of heading  
and section  
639.

203. Section 639 of the principal Act and the heading above it shall be omitted.

Amendment  
of section  
641.

204. In section 641 of the principal Act, in sub-section (3), for 10 the word “rules”, the word “alterations” shall be substituted.

Amendment  
of section  
642.

205. In section 642 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with fine which may 15 extend to five hundred rupees and where the contravention is a continuing one, with a further fine which may extend to fifty rupees for every day during which such contravention continues.”.

Amendment  
of section  
643.

206. In section 643 of the principal Act,— 20

(a) in sub-section (1),—

(i) in clause (a), for the words, brackets and figures “sub-section (1) of section 549 and sub-section (3) of section 550”, the words, brackets and figures “sub-section (3) of section 550, section 552 and sub-section (3) of section 555” 25 shall be substituted;

(ii) in clause (b), in sub-clause (iv), the words “and the sub-division of the shares of a company” shall be omitted;

(b) after sub-section (3), the following sub-section shall be 30 inserted, namely:—

“(4) All rules made by the Central Government under sub-section (1) of section 549 and in force immediately before the commencement of the Companies (Amendment) Act, 1959, shall continue in force and be deemed to have 35 been made by the Supreme Court unless and until they are superseded by rules made by the Supreme Court after such commencement.”.

**207.** In section 647 of the principal Act, the following proviso shall be inserted at the end, namely:— Amendment of section 647.

“Provided that where the proceedings in any such winding up are pending at the commencement of the Companies (Amendment) Act, 1959,—

(a) sections 463, 502, 515 and 524 shall, as far as may be, also apply in relation thereto;

(b) the liquidator appointed by the Court in any such winding up and then functioning shall in such manner and at such time as may be prescribed by the Central Government, pay the monies received by him as such liquidator, into the public account of India in the Reserve Bank of India.

**208.** Section 650 of the principal Act shall be omitted.

Omission of section 650.

**209.** In Schedule I to the principal Act, in Table A, in regulation 3, in clauses (1) and (2), the word “general” shall be omitted. Amendment of Schedule I.

**210.** After Schedule I to the principal Act, the following Schedule shall be inserted, namely:— Insertion of new Schedule IA.

# “SCHEDULE IA

[See section 6(c) ]

## LIST OF RELATIVES

1. Father (including step-father).
2. Mother (including step-mother).
3. Son (including step-son).
4. Son's wife.
5. Daughter (including step-daughter).
6. Father's father.
7. Father's mother.
8. Mother's mother.
9. Mother's father.
10. Son's son.
11. Son's son's wife.
12. Son's daughter.
13. Daughter's husband.
14. Daughter's son.
15. Daughters's son's wife.

16. Daughter's daughter.	
17. Daughter's Daughter's husband.	
18. Brother (including step-brother).	
19. Brother's wife.	
20. Sister (including step-sister).	5
21. Sister's husband.	
22. Husband's father.	
23. Husband's mother.	
24. Husband's father's father.	
25. Husband's father's mother.	10
26. Husband's mother's father.	
27. Husband's mother's mother.	
28. Husband's sister.	
29. Wife's father.	
30. Wife's mother.	15
31. Wife's father's father.	
32. Wife's father's mother.	
33. Wife's mother's father.	
34. Wife's mother's mother.	
35. Wife's brother.	20
36. Wife's sister.	
37. Wife's sister's husband.	
38. Father's brother.	
39. Father's sister.	
40. Mother's brother.	25
41. Mother's sister.	
42. Father's brother's wife.	
43. Father's sister's husband.	
44. Mother's brother's wife.	
45. Mother's sister's husband.	30
46. Brother's son.	
47. Brother's son's wife.	
48. Brother's daughter.	
49. Sister's son.	
50. Sister's daughter.	
51. Sister's daughter's husband.	35



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52. Father's brother's son.  
53. Father's brother's daughter.  
54. Father's sister's son.  
55. Father's sister's daughter.  
5 56. Mother's brother's son.  
57. Mother's brother's daughter.  
58. Mother's sister's son.  
59. Mother's sister's daughter.".

211. In Schedule VI to the principal Act,—

(a) for Part I, the following Part shall be substituted, namely:—

PART I

Form of balance-sheet

*Balance-Sheet of* ..... (Here enter the name of the company)  
*As at* ..... (Here enter the date as at which the balance-sheet is made out)

Instructions in accordance with which liabilities should be made out	Liabilities		Assets		Instructions in accordance with which assets should be made out
	Figures for the previous year	Figures for the current year	Figures for the previous year	Figures for the current year	
	Rs. (b)	Rs. (b)	Rs. (b)	Rs. (b)	
<p>*Terms of redemption or conversion (if any) of any Redeemable Preference Capital to be stated, together with earliest date of redemption or conversion.</p> <p>Particulars of any option on unissued share capital to be specified.</p> <p>†Particulars of the different classes of preference shares to be given.</p>	<p>*SHARE CAPITAL :</p> <p>Authorised ..... shares of Rs. .... each.</p> <p>†Issued (distinguishing between the various classes of capital and stating the particulars specified below, in respect of each class) ..... shares of Rs. .... each.</p> <p>†Subscribed (distinguishing between the various classes of capital and stating the particulars specified below, in respect of each class.) (c) ..... shares of Rs. .... each.</p>		<p>*FIXED ASSETS :</p> <p>Distinguishing as far as possible between expenditure upon (a) goodwill, (b) land, (c) buildings, (d) leaseholds, (e) railway sidings, (f) plant and machinery, (g) furniture and fittings, (h) development of property, (i) patents, trade marks and designs, (j) live-stock and (k) vehicles, etc.</p>		<p>*Under each head the original cost, and the additions thereto and deductions therefrom during the year, and the total depreciation written off or provided upto the end of the year to be stated.</p> <p>In case where original cost cannot be ascertained, the valuation shown by the books shall be given and where any of the assets are sold and the original cost in respect thereof is not ascertainable, the amount of the sale proceeds shall be shown as deduction.</p>

Rs. . . . . called up.  
Of the above shares, . . .  
shares are allotted as  
fully paid up pursuant  
to a contract without  
payments being re-  
ceived in cash.

Of the above shares, . . .  
shares are allotted as  
fully paid up by  
way of bonus shares  
or other shares by  
way of capitalisation  
of profits or reserves  
or/and from share  
premium account.

*Less : Calls unpaid :*  
(i) By managing agents  
or secretaries and  
treasurers and where  
the managing agent  
or secretaries and  
treasurers are a firm,  
by the partners there-  
of, and where the  
managing agent or  
secretaries and trea-  
surers are a private  
company, by the di-  
rectors or members  
of that company.

(\*) By directors.

(iii) By others.

*Add Forfeited shares*

Where sums have been written  
off on a reduction of capital or  
a revaluation of assets, every  
balance-sheet, (after the first  
balance-sheet) subsequent to  
the reduction or revaluation  
shall show the reduced figures  
and with the date of the re-  
duction in place of the ori-  
ginal cost.

Each balance-sheet for the  
first five years subsequent to  
the date of the reduction, shall  
show also the amount of the  
reduction made.  
Similarly, where sums have  
been added by writing up  
the assets, every balance-

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—Instructions in accordance with which liabilities should be made out	Liabilities		Assets		Instructions in accordance with which assets should be made out
	Figures for the previous year	Figures for the current year	Figures for the previous year	Figures for the current year	
<p>•Additions and deductions since last balance-sheet to be shown, under each of the specified heads.</p> <p>The word "fund" in relation to any "Reserve" should be used only where such Reserve is specifically represented by readily realisable and earmarked assets.</p>	Rs. (b)	Rs. (b)	Rs. (b)	Rs. (b)	5
	<p><b>*RESERVES AND SURPLUS :</b></p> <p>(1) Capital Reserves not available for Dividend.</p> <p>(2) Capital Redemption Reserve.</p> <p>(3) Share Premium Account (cc)</p> <p>(4) Other Reserves specifying the nature of each reserve and the amount in respect thereof.</p> <p>Less: Debit balance in Profit and Loss Account (if any).</p> <p>(5) Any other Reserve created out of Net Profit.</p> <p>(6) Surplus that is balance in Profit and Loss Account after providing for proposed allocations, viz., Di-</p>		<p><b>INVESTMENTS :</b></p> <p>Showing nature of investments and mode of valuation, for example cost or market value and distinguishing between—</p> <p>* (1) Investments in Government or Trust Securities.</p> <p>* (2) Investments in shares, debentures or bonds (showing separately shares, fully paid up and partly paid up and also distinguishing the different classes of shares</p>		<p>sheet subsequent to such writing up shall show the increased figures with the date of the increase in place of the original cost. Each balance-sheet for the first five years subsequent to the date of writing up shall also show the amount of increase made.</p> <p>*Aggregate amount of company's quoted investments and also the market value thereof shall be shown.</p> <p>Aggregate amount of company's unquoted investments shall also be shown.</p>
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vidend, Bonus or Reserves.  
(7) Proposed additions to reserves.  
(8) Sinking Funds.

#### SECURED LOANS :

- \* (1) Debentures †
- \* (2) Loans and Advances from Banks.
- \* (3) Loans and Advances from subsidiaries.
- \* (4) Other Loans and Advances.

\*The nature of the security to be specified in each case.

Where loans have been guaranteed by managing agents, secretaries and treasurers, managers and/or directors, a mention thereof shall also be made and also the aggregate amount of such loans under each head.

†Terms of redemption or conversion (if any) of debentures issued to be stated together with earliest date of redemption or conversion.

and showing also in similar details investments in shares, debentures or bonds of subsidiary companies.  
(3) Immovable properties.

#### CURRENT ASSETS, LOANS AND ADVANCES :

- (A) Current Assets.
- (1) Interest accrued on Investments.
- ††(2) Stores and Spare Parts.
- ††(3) Loose Tools.
- ††(4) Stock-in-trade.
- \*\* (5) Works in Progress.
- †(6) Sundry Debtors.
  - (a) Debts outstanding for a period exceeding six months.
  - (b) Other debts.
- Less : Reserve.
- †(7) Cash and bank balances.

††Mode of valuation of stock shall be stated and the amount in respect of raw materials shall also be stated separately where practicable.

\*\*Mode of valuation of works-in-progress shall be stated.

†In regard to Sundry Debtors particulars to be given separately of—(a) debts considered good and in respect of which the company is fully secured; and (b) debts considered good for which the company holds no security other than the debtor's personal security; and (c) debts considered doubtful or bad.

Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies res-

Instructions in accordance with which liabilities should be made out	Liabilities		Assets		Instructions in accordance with which assets should be made out
	Figures for the previous year	Figures for the current year	Figures for the previous year	Figures for the current year	
	Rs. (b)	Rs. (b)	Rs. (b)	Rs. (b)	<p>pectively in which any 10 director is a partner or a director or a member to be separately stated.</p> <p>Debts due from other com- 15 panies under the same management to be disclosed with the names of the companies (<i>vide</i> section 370).</p> <p>The maximum amount due 20 by directors or other officers of the company at any time during the year to be shown by way of a note.</p> <p>The Reserves to be shown 25 under this head should not exceed the amount of debts stated to be considered doubt- ful or bad and any surplus of such Reserves, if already 30 created, should be shown at every closing under "Reserves and Surplus" (in the Lia- bilities side) under a sepa- rate sub-head "Reserve for 35 Doubtful or Bad Debts".</p>

†The balances lying with bankers on current accounts, call accounts and deposit accounts shall be shown separately.

### UNSECURED LOANS :

- (1) Fixed Deposits.  
 †(2) Loans and Advances from subsidiaries.  
 †\*(3) Short Term Loans and Advances :  
     (a) From Banks.  
     (b) From others.  
 †(4) Other Loans and Advances :  
     (a) From Banks.  
     (b) From others.

### CURRENT LIABILITIES AND PROVISIONS :

- A. Current Liabilities.  
 (1) Acceptances.  
 (2) Sundry Creditors.  
 (3) Subsidiary Companies.  
 (4) Provision for Taxation.  
 (5) Proposed Dividends.  
 (6) Advance Payments and Un-expired Discounts for the portion for which value has still to be given, e.g., in the case of the following classes of companies :  
 (Newspaper, Fire Insurance, Theatre, Clubs, Banking, Steamship Companies, etc.)

### †(B). Loans and Advances.

- (8) Advances and Loans to Subsidiaries.  
 (9) Bills of Exchange.  
 (10) Advances recoverable in cash or in kind or for value to be received, e.g., Rates, Taxes, Insurance, etc.  
 (11) Balances on current account with Managing Agents or Secretaries & Treasurers.  
 (12) Balances with Customs, Port Trust, etc. (where payable on demand).

†The above instructions regarding "Sundry Debtors" apply to "Loans and Advances" also.

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†Where loans have been guaranteed by managing agents, secretaries and treasurers, managers, and/or directors, a mention thereof shall also be made and also the aggregate amount of such loans under each head.

\*See note (d) at foot of Form.

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Instructions in accordance with which liabilities should be made out	Liabilities		Assets		Instructions in accordance with which assets should be made out
	Figures for the previous year	Figures for the current year	Figures for the previous year	Figures for the current year	
					5
	Rs. (b)	Rs. (b)	Rs. (b)	Rs. (b)	10
	(7) Unclaimed Dividends.				
	(8) Other Liabilities (if any).				
	(9) Interest accrued and accruing on secured loans.				15
	(10) Interest accrued and accruing on unsecured loans.				
	B. Provisions.				
	(11) For contingencies.				20
	(12) For Provident Fund scheme.				
	(13) For insurance, pension and similar staff benefit schemes.				
	(14) Other provisions.				
††The period for which the dividends are in arrear or if there is more than one class of shares, the dividends on each such class are in arrear, shall be stated.	[A footnote to the balance-sheet may be added to show separately :—				25
	(1) Claims against the company not acknowledged as debts.				
	(2) Uncalled liability on shares partly paid.				30
	††(3) Arrears of fixed cumulative, dividends.				



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The amount shall be stated before deduction of income-tax, except that in the case of tax free dividends the amount shall be shown free of income-tax and the fact that it is so shown shall be stated.

††The amount of any guarantees given by the company on behalf of directors or other officers of the company shall be stated and where practicable, the general nature and amount of each such contingent liability, if material, shall also be specified.

(4) Estimated amount of contracts remaining to be executed on capital account and not provided for.

††(5) Other money for which the company is contingently liable.]

# MISCELLANEOUS EXPENDITURE (to the extent not written off):

- (1) Preliminary expenses.
- (2) Expenses including commission or brokerage on underwriting or subscription of shares or debentures.
- (3) Discount allowed on the issue of shares or debentures.
- (4) Interest paid out of capital during construction (also stating the rate of interest).
- (5) Development expenditure not adjusted.
- (6) Other items (specifying nature).

## PROFIT AND LOSS ACCOUNT.

Loss brought forward  
Less Reserves set off.

## NOTES

*General instructions for preparation of balance-sheet.*—(a) The information required to be given under any of the items or sub-items in this Form, if it cannot be conveniently included in the balance-sheet itself, shall be furnished in a separate Schedule or Schedules to be annexed to and to form part of the balance-sheet. This is recommended when items are numerous.

(b) *Naye Paisa* can also be given in addition to Rupees, if desired. 5

(c) In the case of subsidiary companies, etc., the number of shares held by the holding company as well as by the ultimate holding company and its subsidiaries must be separately stated.

The auditor is not required to certify the correctness of such share-holdings as certified by the management.

(cc) The item "Share Premium Account" shall include full details of its utilization in the manner provided in section 78.

(d) Short Term Loans will include those which are due for not more than one year as at the date of the balance-sheet. 10

(e) Depreciation written off or provided shall be allocated under the different asset heads and deducted in arriving at the value of Fixed Assets.

(f) Dividends declared by subsidiary companies after the date of the balance-sheet cannot be included unless they are in respect of a period which closed on or before the date of the balance-sheet.

(g) Any reference to benefits expected from contracts to the extent not executed shall not be made in the balance-sheet but shall be made in the Board's report. 15

(h) The debit balance in the Profit and Loss Account shall be set off against the General Reserve, if any.

(i) As regards Loans and Advances, amounts due by the Managing Agents or Secretaries and Treasurers, either severally or jointly with any other persons, to be separately stated; the amounts due from other companies under the same management should also be given with the names of the companies *vide* section 370; the maximum amount due from every one of these at any time during the year must be shown.

(j) Particulars of any redeemed debentures which the company has power to issue should be given. 20

(k) Where any of the company's debentures are held by a nominee or a trustee for the company, the nominal amount of the debentures and the amount at which they are stated in the books of the company shall be stated.

(l) A list of Investments separately classifying Trade Investments and Other Investments should be attached to the balance-sheet stating the names of the bodies corporate (with the names of their managing agents or secretaries and treasurers, if any) in whose shares, debentures or bonds, investments have been made and also stating the amounts in respect of each item; provided however that it shall not be necessary to give such particulars (a) in respect of investments made by Managing Agency companies in managed companies' shares, debentures or bonds, or (b) in respect of Investments made by investment companies, provided that particulars in respect of investments in shares of private companies shall be given. The amount in respect of the holdings by investment companies in unquoted share or shares of private limited companies shall be separately stated, specifying the name of each such company and the amount invested therein. 25

A "Trade Investment" means an investment by a company in the shares or debentures of another company, not being its subsidiary, for the purpose of promoting the trade or business of the first company.

(m) If, in the opinion of the Board, any of the current assets have not a value on realisation in the ordinary course of business at least equal to the amount at which they are stated, the fact that the Board is of that opinion shall be stated.

(n) Except in the case of the first balance-sheet laid before the company after the commencement of the Act, the corresponding amounts for the immediately preceding financial year for all items shown in the balance-sheet shall be also given in the balance-sheet. The requirement in this behalf shall in the case of companies preparing quarterly or half-yearly accounts, etc., relate to the balance-sheet for the corresponding date in the previous year.

(o) The amounts to be shown under Sundry Debtors shall include the amounts due in respect of goods sold or services rendered or in respect of other contractual obligations but shall not include the amounts which are in the nature of loans or advances.

(p) Advances by Directors, Managing Agents, Secretaries and Treasurers, Managers as also balances on current account with them whether they are in credit or debit shall be shown separately. ;

(b) in Part II,—

(i) in paragraph 3,—

(1) in sub-paragraph (iii), for the words “works remained to be executed”, the words “such works have been completed” shall be substituted;

(2) in sub-paragraph (v), for the word “payable”, the words “paid or payable” shall be substituted;

(3) in sub-paragraph (x), the following *Explanation* shall be added at the end, namely:—

“*Explanation.*—For purposes of items (d) and (e), expenditure under various heads such as salaries and wages, stores, etc., should be allocated to Repairs Accounts and the aggregate figures allocated under each such head should also be indicated by way of note.”;

(4) in sub-paragraph (x), in item (f) (3), the following words shall be added at the end, namely:—

“to the extent not adjusted from any previous provision or reserve.

*Note.*—Information in respect of this item should also be given in the balance-sheet under the relevant provision or reserve account.”;

(5) in sub-paragraph (xii) (a), the following words shall be added at the end, namely:—

“to the extent not adjusted from any previous provision or reserve.

*Note.*—Information in respect of this item should also be given in the balance-sheet under the relevant provision or reserve account”.

(ii) for paragraph 4, the following paragraphs shall be substituted, namely:—

“4. The profit and loss account shall also contain or give by way of a note detailed information in regard to the following payments received during the financial year by the directors (including managing directors), the managing agent, secretaries and treasurers or

manager, if any, from the company, the subsidiaries of the company and any other person:—

5 (i) managerial remuneration, that is to say, amounts paid during the financial year to the directors (including managing directors), the managing agent, secretaries and treasurers or manager, if any;

10 (ii) expenses reimbursed to the managing agent under section 354;

(iii) commission or other remuneration payable separately to a managing agent or his associate under sections 356, 357 and 358;

15 (iv) commission received by the managing agent as buying or selling agent of other concerns under section 359;

20 (v) the money value of the contracts for the sale or purchase of goods and materials or supply of services, entered into by the company with the managing agent or his associate under section 360 during the financial year;

(vi) other allowances (details to be given);

(vii) any other perquisites or benefits in cash or in kind (stating approximate money value where practicable);

25 (viii) pensions, etc.,—

(a) pensions,

(b) gratuities,

(c) payments from provident funds, in excess of own subscriptions and interest thereon,

30 (d) compensation for loss of office,

(e) consideration in connection with retirement from office.

35 4A. The profit and loss account shall further contain or give by way of a note detailed information in regard to amounts paid to the auditor, whether as fees, percentages or otherwise for services rendered—

(a) as auditor; and

(b) in any other capacity.”.

212. In Schedule VII to the principal Act, clause (1) shall be ~~omitted~~ <sup>Amendment of Schedule VII.</sup>

## STATEMENT OF OBJECTS AND REASONS

The object of this Bill is to amend the Companies Act, 1956. The Act had been in force for about a year when Government decided that the defects and deficiencies in its working should be examined by a Committee. Accordingly, in May, 1957, the Government appointed a Committee under the chairmanship of Shri A. V. Visvanatha Sastri, a former judge of the Madras High Court, to examine the structure of the Act as well as its contents with a view not only to removing its defects and deficiencies but also ensuring better fulfilment of the purposes underlying the Act. In November, 1957, the Committee submitted its Report, which the Government published and placed before both Houses of Parliament in December, 1957.

2. The present Bill is based largely on the recommendations of the Committee, although in some particulars they have been modified partly in the light of the experience of the working of the Act gained since the submission of the Report and partly by the views expressed on these recommendations by Chambers of Commerce and others. The amendments of the Companies Act, as included in the Bill, fall under the following heads:—

(i) amendments considered necessary to overcome practical difficulties experienced in course of the working of the Act;

(ii) amendments of a clarificatory nature, designed to remove drafting defects and obscurities which have caused difficulty in the interpretation of the Statute; and

(iii) amendments considered necessary to ensure the better fulfilment of the purposes of the Act and to remove lacunae in the existing provisions.

The Notes on clauses explain briefly the reasons for the proposed amendments.

LAL BAHADUR.

NEW DELHI;  
*The 23rd April, 1959.*

*Notes on clauses**Clause 2.—*

*Sub-clause (a)—“associate of the managing agent where the managing agent is a body corporate”.*

This amendment is based on the recommendation made in para 13 of the Report of the Companies Act Amendment Committee (hereinafter referred to as the Report) and is designed to bring within the definition of the term “associate” in relation to a managing agent a subsidiary of a body corporate which is under the control of the managing agent.

*Sub-clause (b) “associate of secretaries and treasurers—where the secretaries and treasurers are a body corporate”.*

This amendment corresponds to the amendment in section 2(3) (c).

*Sub-clause (c)—“body corporate” or “corporation”.*

The proposed amendment clarifies that, for purposes of the Companies Act, co-operative societies do not fall within the purview of the definition, (*vide* para 14 of the Report). Power is also proposed to be taken to exclude any other body corporate from the scope of the definition by notification in the Official Gazette.

*Sub-clause (d)—“branch office”.*

The redraft seeks mainly to clarify the circumstances in which an establishment of a company should be deemed to be a “branch office” so that the provisions of section 228, as proposed to be amended, in regard to audit of accounts of branch office of a company, may be more effective (para 15 of the Report).

*Sub-clause (e)—“Court”.*

This amendment is merely clarificatory. (See paragraph 16 of the Report.)

*Sub-clause (f)—“managing director”.*

The proposed amendment seeks to clarify that the power to do acts of a routine administrative character alone, such as signing of cheques and share certificates, will not make a director a managing director, and provide that the managing director is as much subject to the supervision, direction and control of the Board of directors of a company as other managerial personnel (para 19 of the Report).

*Sub-clause (g)*—"officer".

The amendment is consequential on the amendment proposed to definition of "secretary" in section 2(45). (See para 20 of the Report.)

*Sub-clause (h)*—"prescribed".

So as to accord with the correct constitutional position the changes proposed will firstly take away from the Supreme Court, and vest in the Central Government, the power to make rules in relation to withdrawal and payment into the public account of India of moneys handled by the Official Liquidator and secondly, vest in the Supreme Court, rather than in the Central Government, the power to frame rules for inspection of books and papers of the company, while in the custody of the Official Liquidator, as liquidation in such cases will be under the supervision of the Court and should appropriately be subject to uniform rules framed by the Supreme Court. (See para 21 of the Report.)

*Sub-clause (i)*—"prospectus".

The amendment is purely clarificatory. (See para 22 of the Report.)

*Sub-clause (j)*—"secretary".

The amendment is of a clarificatory nature and is intended to enable a firm or a body corporate comprising men of professional competence to function as secretaries of companies. (See para 20 of the Report.)

*Clause 3.*—The amendments seek to remove certain drafting defects—(i) in clause (b) of sub-section (1) of section 4 in that the holders of preference shares issued before the commencement of the Act which may carry the same voting rights as equity share are not covered by it, though such voting rights are preserved under section 90; and (ii) in clause (c) of sub-section (2) of section 4 which is inconsistent with section 253 which prohibits a body corporate from being appointed as a director of a company. (See para 25 of the Report.)

It is proposed to place a private company registered in India, which is a subsidiary of a foreign public company, at par with an Indian private company which is a subsidiary of a public company registered in India. An exemption is proposed to be provided in the case of a private company registered in India which is a wholly owned subsidiary of a public company incorporated outside India.

*Clause 4.*—The redraft of section 6 is based on the recommendation contained in para 26 of the Report so that in order to make it



practicable for the officers of a company to comply with the provisions of the several sections in which the expression "relative" occurs, very remote relationships may be excluded from the purview of the definition.

*Clause 5.*—The proposed amendment seeks to harmonise the provisions of section 8 with those of the new definition of "branch office" in clause 2(d).

*Clause 6.*—This is to clarify that the Court shall cause notice of the petition for confirmation of the alteration of memorandum to be served on the Registrar.

*Clause 7.*—The amendments are based on the recommendations contained in para 30 of the Report that the Registrar should be required to certify the registration of the Court's order made under section 17(5) within one month from the date of filing of the relevant documents with him and the Court should be empowered to extend this period.

*Clause 8.*—The amendment to section 19(2) of the Act is consequential on the amendments suggested in section 18. (See para 30 of the Report.)

*Clause 9.*—There are several sections in the Act, provisions of which either cannot be fully complied with by non-profit making companies, e.g., Chambers of Commerce, trade associations, clubs, etc., because of their peculiar constitution and manner of working, or seldom serve any useful purpose in the case of such bodies. Government, therefore, propose to take power to modify the requirements of such sections in their application to such companies. Most of these sections deal with procedural matters, e.g., holding of meetings, election of directors, proxies, voting by show of hands, etc.

*Clause 10.*—The amendment seeks to make it permissible to a company, other than a company limited by shares, to include any additional matters in its articles in so far as they are not inconsistent with the provisions contained in the Form in any of the Tables C, D and E.

*Clause 11.*—It is considered desirable to subject to Governmental scrutiny any proposals for conversion of public companies into private companies so as to ensure that such conversions are not resorted to merely with the object of evading the restrictions placed on the management of public companies. (para 34 of the Report.)

*Clause 12.*—It is a necessary clarification as the words "or otherwise to pay money to the company" have been construed as prohibiting any change in respect of levy of fees, subscriptions, etc., by

clubs, associations, etc., by amending the articles of association or regulations, in the same manner as the statutory restriction applies to a contributory of share capital. (para 36 of the Report).

*Clause 13.*—The changes proposed are designed to (a) raise the fee for supplying copies of documents in keeping with present day costs, (b) discourage frivolous demands for copies of documents and (c) provide sufficient time for supplying the copies. (para 37 of the Report.)

*Clause 14.*—The proposed amendment is intended to avoid the improper fastening of liability as contributories on persons, who never applied for shares. (para 38 of the Report.)

*Clause 15.*—The amendment proposed implements the recommendation in para 23 of the Report that private companies, which employ public money to an appreciable extent, should be subject to the same restrictions and limitations as to disclosure and otherwise, as apply to public companies. It is proposed to exempt a private company which is wholly-owned either by another private company registered in India or by one or more foreign companies from the operation of the new requirement.

*Clause 16.*—The changes proposed in section 49 seek to implement the recommendations made in para 39 of the Report that some latitude may be given to companies in those cases where, on account of the provisions of some other law for the time being in force, it is not possible for the companies to keep investments exclusively in its own name, ensure that indirectly through nominees trusts ought not to be entered on the register of members of a company, and facilitate operation through banks.

*Clause 17.*—The expression “unless the contrary is proved” in clause (b) of sub-section (2) of section 53, may be construed to mean that the presumption regarding the receipt of notice of a general meeting is rebuttable, and is likely to cause difficulty in practice in those cases where members receive the notice of a general meeting late due to delays in post but may nevertheless urge that the notice given to them is a notice of a period less than 21 days and goes against the provisions of section 171(1) of the Act. It is, therefore, proposed to delete the expression from clause (b) of section 53(2).

*Clause 18.*—This amendment is based on the recommendation in para 40 of the Report that the circumstances in which the Registrar may refuse to register a prospectus may be clarified.

*Clause 19.*—As the periods of three weeks and six weeks laid down in sub-section (1) of section 73 for obtaining the permission of a recognized stock exchange for the securities of the company being dealt in thereon are found to be too short, it is proposed to extend the periods to four weeks and seven weeks respectively, as recommended in para 42 of the Report.

*Clause 20.*—Section 75 provides that whenever a company having a share capital makes any allotment of its shares, the company shall within one month thereafter file with the Registrar, *inter-alia*, a return of allotment stating the number and nominal amount of the shares comprised in the allotment, etc. The amendment seeks to make it clear that similar particulars in respect of bonus shares should also be filed with the Registrar together with the details envisaged in clause (a) of sub-section (1).

*Clause 21.*—As recommended in para 43 of the Report it is proposed to clarify that the commission payable to a person in consideration of his having subscribed to, or having procured subscriptions to, shares and debentures should be limited to five per cent. or two and a half per cent. of the price at which the shares or the debentures, respectively, may be issued irrespective of whether such commission is paid out of profits or capital moneys.

*Clause 22.*—The amendments proposed in section 80 seek to bring the wording of sub-sections (1) (d) and (5) of section 80 into accord with modern commercial and accountancy practice and rectify a drafting mistake in sub-section (4). (para 45 of the Report.)

*Clause 23.*—Section 81(1), as it stands, is susceptible of more than one interpretation. It is proposed to make it clear that if the Board of directors of a company decides to increase the subscribed capital of the company, after the expiry of one year from the allotment of shares in the company for the first time after its formation the formalities laid down in clauses (a) to (d) of sub-section (1) should be complied with unless the company in general meeting gives any directions to the contrary.

*Clause 24.*—This amendment gives effect to the recommendation made in para 48 of the Report that necessary provisions should be made in the Act so as to prevent fraudulent issue of duplicate shares.

*Clause 25.*—The changes proposed in the section seek to make provision (a) (except in the case of preference shares issued before the commencement of the Act) for adjustment of voting rights attached to different categories of shares within any class so as to

bring them into conformity with the voting rights attached to equity shares under section 87(1), and (b) empowering any shareholder of a company to apply to the Court for an order under this section, in case a company fails to equalise or adjust voting rights. (See paragraphs 50 and 51 of the Report.)

**Clause 26.**—As pointed out in paragraph 52 of the Report the amendment seeks to correct inconsistency between the provisions of section 106(1) and (2) and those contained in Regulation 3(1) of Table A in Schedule I.

**Clause 27.**—It is proposed to make provisions in section 111 so as to (a) empower the Government to prescribe a fee for appeal; (b) require the company to disclose reasons for refusing to register a transfer or transmission of shares or debentures, even though its articles do empower it to refuse to disclose reasons and (c) enforce the orders passed on appeal by the Government. (See para 54 of the Report.)

**Clause 28.**—As recommended in para 55 of the Report it is proposed to bring section 113 in line with section 111 *re.* notice of refusal.

**Clause 29.**—As per para 56 of the Report, in order to obviate inconveniences of seeking Court intervention for condoning even unavoidable postal or other delays the Registrar is empowered to condone a delay of not more than seven days.

**Clause 30.**—As pointed out in para 57 of the Report, the existing section 138 creates some practical difficulties and causes hardships to many companies particularly in regard to the giving of notice of part satisfaction to the Registrar. It is, therefore, proposed to amend sub-section (1) removing the obligation to notify part satisfaction to the Registrar and make consequential change in sub-section (3).

**Clauses 31 and 32.**—The amendments proposed are consequential to those proposed in clause 30.

**Clause 33.**—Whereas a time limit of 21 days after the execution of any debentures of a series has been prescribed under section 128 by which a company should file particulars in regard to the issue of the debentures and a similar time limit has been laid down in section 138 for the giving of an intimation of the payment or satisfactions of a charge and under section 142(1) (b) and (c) a penalty has been provided for default in filling the particulars or in giving the intimation, there is no provision for the court to grant any extension of the time for the purpose where default has occurred due to inadvertence or other sufficient reason. It is, therefore, proposed to

make it permissible to a court to give extension of time for filing the particulars of debentures or for giving intimation of satisfaction.

*Clause 34.*—This is consequential on the amendment of section 138 proposed in clause 30.

*Clause 35.*—This is based on the recommendation in para 58 of the Report that no useful purpose would be served by requiring the registration of charges which had been either extinguished or discharged before the present Act came into force.

*Clause 36.*—The changes proposed in section 147 of the Act are designed to (a) dispense with the mention of the name and address of the registered office of the company in purely commercial advertisements, and (b) require a company to mention the address of its registered office in all its business letters, bill heads, etc. (See para 59 of the Report.)

*Clause 37.*—The amendment proposed in section 149 seeks to give effect to the recommendation in para 60 of the Report that sub-section (8), which is inconsistent with the scheme of section 149, should be removed.

*Clause 38.*—The proposed provision is on the line suggested in para 62 of the Report and is intended to prevent any *mala-fide* action on the part of companies calculated to deprive transferees of shares of the benefit of dividends falling due. The proposed amendment will also bring section 154 in line with section 27 of the Securities Contracts (Regulation) Act, 1956, which requires a transferee to lodge the security and other documents with the company within 15 days of the date on which the dividend becomes due.

*Clause 39.*—Besides the clarificatory amendment to sub-section (1) of section 155 the amendment proposed gives effect to the recommendation of the Committee for extending the power of the court to rectify the register of members to the rectification of the register of debenture holders also. (See para 63 of the Report.)

*Clause 40.*—It provides that the notice of rectification of the register of members should be filed by the company with the Registrars and affords a relaxation in respect of the time taken in drawing up the order of the court and in obtaining a copy of that order when computing the period of 14 days prescribed for filing.

*Clause 41.*—Under the present section, a company could contend that if it makes default in holding the annual general meeting it could not be penalised for not filing the annual returns and accounts

which is only consequential. To deal with such defaults conveniently it is proposed to make provisions in the section requiring every company (a) where the annual general meeting for any year has not been held, to file the annual returns within forty-two days from the latest date on which the annual meeting should have been held in accordance with the provisions of the Act, and (b) to state the reasons for not holding the annual general meeting.

In order to avoid burden some work of a repetitive character, it is also proposed to make a provision which will dispense with the filing of bulky annual returns every year. (See para 65 of the Report.)

*Clause 42.*—The amendments proposed in section 160 are more or less on the lines proposed under section 159.

*Clause 43.*—The proposed amendment gives effect to the recommendation in para 66 of the Report that while filing the annual return with the Registrar, the management should certify that proper record of transfer of all shares or debentures, and the issue of all further certificates since the date of the last annual return has been kept in the books mentioned for the purpose.

*Clause 44.*—The proposed changes seek to raise the copying fees in keeping with present day costs and to bring section 163 in line with section 39. (*vide* clause 13).

*Clause 45.*—As recommended in para 68 of the Report, it is proposed to make a provision in section 165 requiring auditors of a company to certify the correctness of the account of all receipts and payments of the company.

*Clause 46.*—The provisions of section 166 are not effective against delay in the holding of annual general meetings on the one hand, and on the other, cause unnecessary inconvenience to non-profit making and certain other companies in that they cannot hold annual general meetings at a time and place more convenient to their members, in view of the rigid requirements of the present section. It is proposed to remove these defects from the section on the lines suggested in para 69 of the Report.

*Clause 47.*—The amendment is designed to make it difficult for a company and its officers to escape easily the consequences of failure to hold annual general meeting.

*Clause 48.*—Several sections of the Act require shareholders to give special notice (of 28 days) to the company in case they intend to move any resolution at the general meeting in respect of any of the matters envisaged therein but they cannot be expected to give

such notices in time in all cases without receiving a notice of the meeting from the company. The company is, however, required to give only 21 days notice of the meeting. There is, therefore, an inconsistency between 21 days notice of the general meeting to be given by the company and 28 days special notice to be given by shareholders to the company. The proposed amendment seeks to reverse the position so that 28 days notice of a general meeting would be required to be given by the company to the shareholders and 21 days special notice by shareholders to the company. (See para 72 of the Report.)

*Clause 49.*—The amendment seeks to make it unnecessary for companies to incur heavy costs in publishing the explanatory statements required under section 173 alongwith the notices advertised in newspapers. (See para 73 of the Report.)

*Clause 50.*—The proposed amendment gives effect to the recommendation contained in para 75 of the Report that section 176 should be amended to clarify that a company shall not require that an instrument appointing a proxy shall be deposited with the company earlier than forty-eight hours before the time for holding the meeting.

*Clause 51.*—Section 187 empowers a Corporation to appoint a representative authorising him to exercise the same rights and powers on behalf of the Corporation (including the right to vote by proxy) as the Corporation could exercise as a member, debenture-holder or creditor of the company. The proposed new section (187A) seeks to extend the same rights to a representative appointed by the President of India or the Governor of a State in whose names shares are now held in many companies.

*Clause 52.*—These are consequential on the amendment proposed in section 171 (*vide* clause 48). (See para 78 of the Report.)

*Clause 53.*—The amendments proposed in section 192 in the light of the recommendations in para 79 of the Report are intended to make the records of the Registrar self-contained, and to provide an opportunity to him to scrutinise special resolutions and certain other important resolutions passed by the general body or the Boards of directors of companies.

*Clause 54.*—The amendment proposed in section 193 is designed to ensure the authenticity of the minutes of proceedings of general meetings and of the proceedings of the Board of directors of a company. (See para 80 of the Report.)

*Clause 55.*—This is consequential upon the amendment proposed in section 193 (*vide* clause 54). (See para 80 of the Report.)

*Clause 56.*—This is consequential upon the amendments proposed in sections 193 and 194 (*vide* clauses 54 and 55).

*Clause 57.*—The amendments proposed give effect to the recommendations in para 81 of the Report. Opportunity is also taken to clarify that the company would be entitled to demand advance payment of fees for supplying copies of minutes of proceedings from its members.

*Clause 58.*—The proposed amendment, on the line of the recommendation in para 82 of the Report, is designed to discourage the practice of giving publicity to the Chairman's speeches alone without indicating the trend of the discussions at the meeting on the agenda.

*Clause 59.*—This is to stop a company from employing more than one type of managerial personnel simultaneously which is needless and expensive.

*Clause 60.*—The changes suggested in section 198 are intended partly to clarify the overriding character of the substantive provisions of the section, which deals with over-all maximum managerial remuneration, and partly to emphasize that the maximum is only in respect of managerial remuneration and not payment for other services rendered in conformity with express provisions elsewhere in the Act. It is proposed to clarify the meaning of remuneration in relation to the managerial personnel. (See para 83 of the Report.)

*Clause 61.*—The changes proposed in sub-section (1) of section 204 seek to exclude trustees, appointed by the holders of debentures of the company from the scope of the sub-section, so as to ensure that they may continue in office until the purposes of the trust have been fulfilled, and also to empower the Central Government to extend the initial period of appointment of a firm or body corporate to any place of profit from 5 years to 10 years in appropriate cases. The amendment of sub-section (5) is of a clarificatory nature. These amendments are based on the recommendations contained in paragraph 85 of the Report.

*Clause 62.*—The amendment is based on the recommendation in para 86 of the Report and seeks to impose an obligation on company managements to provide for depreciation before declaring dividends. Opportunity has also been taken to require the payment of dividends in cash in order to discourage the practice of some com-



panies, which pass on unremunerative shares held by them in other companies to their shareholders in lieu of dividends in cash.

*Clause 63.*—The changes suggested in section 207 seek to ensure that companies quickly comply with the statutory requirement to distribute dividends within the prescribed period and also to eliminate the possibility of dividends payable being utilized by companies for their own current expenses. (See para 87 of the Report.)

*Clause 64.*—The amendments are based on the recommendations contained in para 88 of the Report, namely, (a) where the books of account of a company are kept at any place other than the registered office of the company the Registrar should be kept informed of the address of such place, (b) the company should preserve its records for a minimum period of 8 years so that non-availability of records might not hamper any investigation that may be instituted into its affairs and (c) the responsibility of managerial personnel for compliance with the requirements of the Act should not easily be evaded. It is also proposed to empower the Registrar to inspect books of the company whenever this becomes necessary.

*Clause 65.*—The amendment proposed in clause (b) of sub-section (3) of section 210 is consequential upon the amendments suggested in section 166 (*vide* clause 46).

The other change suggested is similar to that proposed in section 209 (5) of the Act.

*Clause 66.*—The changes suggested in section 211 seek to give effect to the recommendations in para 89 of the Report. Opportunity has been taken to clarify that the instructions printed below the form of balance-sheet, contained in Part I of Schedule VI, are required to be complied with as far as circumstances admit.

*Clause 67.*—The amendments suggested to sub-section (2) of section 212 are clarificatory and others consequential to changes in section 209. (See para 90 of the Report.)

*Clause 68.*—This is to make it clear that special or supplementary reports submitted by auditors are required to be attached to the audit report mentioned in sections 216, 219(1) and 220.

*Clause 69.*—The amendment suggested in clause (b) of sub-section (1) of section 217 seeks to rectify a mistake and bring the provision thereof in line with the requirements of Part I of Schedule VI to the Act.

The provisions proposed as new clauses (d) and (e) of sub-section (1) seek to improve the quality of the directors' reports and

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to make them up-to-date for the benefit of the shareholders. (See para 92 of the Report.)

The amendment in sub-section (5) of the section is on the same lines as the amendments in section 209(5). (*vide* clause 64).

*Clause 70.*—The amendment is consequential on the increase of the period of notice for general meetings from 21 days to 28 days. (See para 93 of the Report.)

*Clause 71.*—The amendments proposed in section 220 give effect to the recommendations in para 94 of the Report that private companies should be required to file their profit and loss accounts with the Registrar, the necessary safeguard against disclosure of material information to non-members, provided under the existing section, being continued. It is proposed to empower the Government to extend similar concession to "deemed public companies" in appropriate cases.

*Clause 72.*—The proposed amendment seeks to make the Registrar's records complete in regard to who is the auditor of a company even before the annual accounts are filed. (See para 95 of the Report.)

*Clause 73.*—This is intended to enable Restricted State Auditors to undertake the audit of companies throughout India instead of only in the States where they had hitherto been eligible to undertake such audits. (See para 96 of the Report.)

*Clause 74.*—This is to put sub-section (5) of section 227 in a simple form. (See para 97 of the Report.)

*Clause 75.*—This is to provide that the accounts of a branch office of a company are to be audited by a Chartered Accountant, who however need not necessarily be the person acting as its statutory auditor. The procedure for the appointment, etc., of branch auditor is also laid down. (See para 98 of the Report.)

*Clause 76.*—As stated in para 99 of the Report, the report on the affairs of a company which the Registrar is required to make to the Central Government under sub-section (6) or (7) of section 234 would be of value only if it is based on a factual appreciation of the position disclosed in the books of accounts, etc., of the company concerned. It is, therefore, proposed to empower the Registrar to call for and inspect such books of accounts, etc., as he might require not only in relation to the statutory documents filed with him, as recommended by the Committee, but also in connection with complaints lodged with him under sub-section (7) of that section.

*Clause 77.*—This proposed new provision seeks to empower the Registrar to seize documents, books and papers of a company after obtaining the orders of a magistrate where he has reason to believe that they may be destroyed or tampered with. (See para 99 of the Report.)

*Clause 78.*—In order to make an investigation into the affairs of related companies, managing agents, etc., effective, it is proposed to bring within the purview of section 239 a body corporate which is or has been at any relevant time managed by company under investigation or accustomed to act under its instructions or otherwise been under its influence. (See para 99 of the Report.)

*Clause 79.*—It is proposed to empower the inspector to examine, whenever necessary, employees of the company who may not be deemed to be included in the terms “officers” or “agents” mentioned in section 240.

The amendments proposed in sub-section (3) are intended in particular to obviate difficulties at present experienced by inspectors in the matter of securing of information or production of books and documents. (See para 99 of the Report.)

*Clause 80.*—The power proposed to be conferred by this new provision on the inspector, appointed by the Government to investigate into the affairs of a company, is similar to that proposed to be conferred on the Registrar under clause 77. This is necessary for proper investigation into affairs of companies. (See para 99 of the Report.)

*Clause 81.*—This amendment is consequential upon the amendment proposed in section 240 (1) of the Act (*vide* clause 79).

*Clause 82.*—It is desirable that the Central Government should have power to effect recovery of costs of investigation instituted *suo moto* or on the report of the Registrar, from the company or such other party, as it thinks fit. The amendment proposed to sub-section (1) (c) seeks to secure this.

The amendment proposed in sub-section (2) of section 245 gives effect to the recommendation of the Committee that the cost of investigation which a company is liable to pay under clause (b) of sub-section (1) may be realised from the company as an arrear of land revenue.

*Clause 83.*—This is consequential upon the amendments proposed in section 240 (1) and 242 (1) of the Act (*vide* clauses 79 and 81).

*Clause 84.*—While accepting the amendment proposed to section 250 by the Committee (*vide* para 99 of their Report) which will render cornering of shares by unscrupulous persons more difficult, it is proposed to make it permissible to the Government to exercise the power to impose restrictions on voting rights relating to any transfer of shares, when, in the opinion of the Government, it is in the public interest to do so. It is also considered desirable to make a provision so as to allow the aggrieved party to represent against the order and for the revision of the order after consideration of such representation.

*Clause 85.*—A private company can be formed with two members but section 252 lays down that a private company which is a subsidiary of a public company should have at least three directors. It is proposed to remove the inconsistency. (*See* para 100 of the Report.)

*Clause 86.*—The use of the words “public or private” in section 253 is unnecessary as the restriction of the section applies to any company whether public or private.

*Clause 87.*—The change suggested in sub-section (1) of section 255 will enable companies especially Chambers of Commerce, trade associations, etc., which generally have annual retirement of all directors, to continue such provisions in their articles of association. (*See* para 101 of the Report.)

*Clause 88.*—This is to make it clear that the expression “retiring director” in sections 256 and 257 refers only to a director liable to retire by rotation and who is about to retire. (*See* para 102 of the Report.)

*Clause 89.*—As it would not be practicable for companies, having a large number of shareholders, to comply with the Committee’s recommendation, as contained in para 102 of the Report, it is proposed to provide that a copy of the notice should be advertised in newspapers at least seven days before the meeting.

*Clause 90.*—The amendment seeks to make it clear that the restrictions contained in the sections against the appointment of persons associated with the managing agent as directors of the managed company should apply even when such persons are proposed to be appointed in a casual vacancy or as an alternate or additional director. (*See* para 103 of the Report.)

*Clause 91.*—The proposed amendment is in line with the amendment suggested in section 256 (*vide* clause 88).

*Clause 92.*—The new section (263A) seeks to give statutory recognition to the practice of electing office bearers by ballot by Chambers of Commerce, clubs and other associations licensed under section 25 of the Act. (See para 104 of the Report.)

*Clause 93.*—The redraft of section 264 seeks to avoid unnecessary filing of a consent with the Registrar even by a candidate for directorship who may subsequently be unsuccessful at the election at the annual general meeting. (See para 105 of the Report.)

*Clause 94.*—Conviction by a foreign court involving moral turpitude should debar a person from working as managing or whole-time director in the same way as similar conviction by an Indian court. (See para 109 of the Report.)

*Clause 95.*—This amendment is of a clarificatory nature and seeks to provide that with certain exceptions, the appointment or re-appointment of a person for the first time after the enactment of this Amendment Bill as a whole-time or managing director shall be subject to approval by Government. (See para 107 of the Report.)

*Clause 96.*—It is proposed to require a director to file a declaration of his having acquired his share qualification, if any, with the Registrar instead of with the company as recommended by the Committee in para 108 of their Report.

*Clause 97.*—The amendment proposed in section 274(1) is in line with the amendment suggested in section 267(c) of the Act. (*vide* clause 94).

*Clause 98.*—It is proposed to provide that a person elected as a director at an age below 65 years shall not be required to vacate his office merely on the ground that he has attained that age before the expiry of his term of appointment. The change suggested in section 280(3) is similar to those proposed in sections 256, 257 and 263 of the Act.

*Clause 99.*—These amendments are partly of a clarificatory nature and also seek to bring the provisions of sub-section (1) (f) into line with those of section 274(2) and prescribe a penalty for breach of the provisions of the section so as to make them more effective. (See para 112 of the Report.)

*Clause 100.*—The proviso suggested to section 285 is based on the recommendation contained in para 113 of their Report that the power to relax the requirements of the section may be conferred on the Central Government so that companies, which do not have enough work to justify expenditure on quarterly meetings of the Board of

directors, may not be compelled to comply with a needless formality. Opportunity is also proposed to be taken to clarify that a meeting of the Board of directors must be held at least once over a period of any three calendar months.

*Clause 101.*—The proposed amendment seeks to clarify that at least two disinterested directors, present at the Board meeting, should constitute a quorum. (See para 113 of the Report.)

*Clause 102.*—This is to facilitate banking operations as recommended in para 115 of the Report except that inter-bank borrowings would be exempted from section 292(1) (c) only in case of borrowings from the Reserve Bank of India, State Bank of India and subsidiary banks of the State Bank of India.

*Clause 103.*—The amendments seek to implement the recommendations contained in para 116 of the Report which involve following changes in section 293:—

- (1) Renewal or continuance of an advance to its directors made by a banking company in the ordinary course of business shall not require the approval of the company in general meeting.
- (2) Adoption of a definition of the expression “temporary loans” on the basis of current banking practice, absence of which has been causing difficulties to banking and other companies.

It is also proposed to accept the Committee’s recommendation as regards donations to political parties subject to the amplification that any donation made for any political purpose to any individual or body should also be disclosed; and to extend the provision to all companies.

*Clause 104.*—The changes suggested in section 294 in para 117 of the Report are designed to regulate the appointment of former managing agents of companies or their associates as sole selling agents of the same companies. It is proposed to accept the Committee’s recommendation that no sole selling agents should be appointed in future in such industries as may be notified except with Government’s approval.

*Clause 105.*—It is proposed to widen the scope of section 295(1) so as to bring within its purview loans, guarantees, etc., given indirectly by a company to any of its directors, their relatives, etc.

The amendment of sub-section (2) removes a drafting defect which failed to recognise the legitimate functions of a holding com-

pany in relation to its subsidiary and a managing agency company in relation to its managed companies, in respect of the giving of loans and provision of guarantees. The amendment to sub-section (6) is of a clarificatory nature:

*Clause 106.*—This gives effect to the recommendation contained in para 118 of their Report.

*Clause 107.*—The change proposed in sub-section (1) of section 297 relaxes the restrictive provisions in emergent cases.

The amendment suggested in sub-section (2) is designed to exclude contracts of insurance and services rendered by a bank to a director, etc., from the purview of section 297 and also to make it clear that a company may sell the goods it produces to any director, his relative, etc., up to Rs. 5,000 in any particular year. (See para 119 of the Report.)

*Clause 108.*—The amendment seeks to clarify that provisions made thereunder do not neutralise the restrictions laid down elsewhere in the Act.

*Clause 109.*—The proposed new sub-section (6) seeks to exclude from the onerous provisions of the section contracts and arrangements between two companies where the interest of any director of the one company in the other does not exceed a shareholding of 2 per cent. of the paid-up share-capital of the other.

*Clause 110.*—The change seeks to liberalise the provisions of the section to some extent, as recommended in para 120 of the Report.

*Clause 111.*—In the light of the recommendations in para 121 of the Report, certain changes of clarificatory nature have been suggested in section 301. Other amendments are designed to remove practical difficulties experienced by companies in complying with the provisions of the section.

*Clause 112.*—This seeks to make some drafting improvements. (See para 122 of the Report.)

*Clause 113.*—As recommended by the Committee in para 123 of their Report, it is proposed to amend section 303 so as to make it permissible to companies to notify minor changes in the particulars contained in the Register of directors, etc., only once a year.

*Clause 114.*—This seeks to provide that directors, managing directors, etc., of a company should notify its particulars relating to any offices held by them in other bodies corporate not only on

their appointment to, but also on relinquishment of, such offices. The provisions will also apply to "deemed directors". (See para 124 of the Report.)

*Clause 115.*—The amendment proposed in section 307 seeks to make the provisions thereof applicable also to managing agents, secretaries and treasurers and managers in the same way as they apply to directors. (See para 125 of the Report.)

*Clause 116.*—The changes proposed in section 309, in the light of the recommendations in para 83 of the Report seek to clarify the scope of the provisions relating to the remuneration of directors and indicates the action to be taken where a director draws remuneration in excess of the prescribed limits.

*Clause 117.*—This amendment is of a clarificatory nature based on the recommendation contained in para 83 of the Report.

*Clause 118.*—This clarifies that an alternate director shall not hold office for a period longer than that permissible to the original director. (See para 128 of the Report.)

*Clause 119.*—The amendments to section 314 seek to remove hardships experienced by companies by the operation of the present provisions of the section. (See para 129 of the Report.)

*Clauses 120 to 122.*—The intention underlying the amendments to sections 315 to 317 is that while there need be no bar to a person holding more than two managing directorships in private companies which are not subsidiaries of public companies, a person, who holds managing directorship in one public company or one private company which is a subsidiary of a public company, must not hold more than one other managing directorship in whatever type of company it may be.

*Clause 123.*—The amendment seeks to bring the section into conformity with the definitions of "directors" and "secretaries and treasurers" in section 2(13) and (44).

*Clause 124.*—The proposed new section provides that no company shall appoint or employ as its managing agent any body corporate which is itself a subsidiary of another body corporate.

*Clause 125.*—The changes proposed in section 342 are intended to clarify that resignation from his office will not absolve the managing agent from the liability for his acts of omission or commission during his tenure as managing agent. (See para 136 of the Report.) Opportunity is also taken to remove a slight inconsistency between the language of existing sub-sections (1) and (2).



*Clause 126.*—The amendment seeks to remove a drafting defect pointed out in para 137 of the Report.

*Clause 127.*—The first amendment seeks to remove a drafting defect. The second amendment is consequential upon the new provision suggested in clause 124.

*Clause 128.*—The amendment proposed in sub-section 1(a) seeks to omit certain words which are really unnecessary and have caused difficulties in interpretation. The proposed new sub-section (3) clarifies the intention underlying those words. The new sub-section (2) is designed to plug a loop-hole by means of which managing agents may evade the restriction as to the limit of remuneration laid down by the section. (See para 139 of the Report.)

*Clause 129.*—The amendments are all of a clarificatory nature, include those suggested in para 140 of the Report and are in accordance with sound accounting practice.

*Clause 130.*—The proposed redraft of section 350 incorporates a precise and equitable mode of ascertaining depreciation for purposes of computing remuneration of managing agents so that disparities resulting from application of the existing section to individual cases, as pointed out by the Committee in para 141 of their Report may not recur.

*Clause 131.*—It is proposed to amend section 356(2)(a), on the line recommended in para 143 of the Report, so that a managing agent is precluded from charging any commission from the company under his management if the office from which the sales are effected is maintained by other companies of which he is also acting as managing agent.

*Clause 132.*—The amendment proposed in section 358 is on the line of that suggested in section 356 (*vide* clause 131). (See also para 143 of the Report.)

*Clause 133.*—The changes proposed in section 360 seek to remove the practical difficulties and hardships mentioned by the Committee in para 145 of the Committee's Report.

*Clause 134.*—These are to ensure that any excess remuneration received by the managing agent is not retained by him and are on the lines of the amendments to section 309 regarding remuneration of directors [*vide* clause 116(b)]. (See para 148 of the Report.)

*Clause 135.*—Apart from bringing in loans given indirectly to the managing agent or his associates through intermediaries the

amendments seek to prevent camouflaging of loans or ordinary transactions in the shape of current accounts. (See para 149 of the Report.)

*Clause 136.*—Some of the proposed amendments seek to provide a more comprehensive definition of the expression “companies under the same group”, in the light of the experience gained of the working of section 370. The other amendments are either of a clarificatory nature or seek to remove drafting defects. (See para 149 of the Report.)

*Clause 137.*—As recommended by the Committee in para 149 of their Report, it is proposed to make a provision similar to that of section 295(3), so as to require companies to enforce repayment of loans outstanding at the commencement of the Companies (Amendment) Act, 1959, if the loans are such as would have attracted the provisions of sections 369 and 370 had those sections been in force at the time when the loans were made.

*Clause 138.*—It is proposed to redraft section 372 so as to extend the principles underlying it to all inter-company investments by way of acquisition of shares with voting rights beyond certain prescribed limits.

It is also proposed to ensure that the register of investments contemplated in sub-section (5), is kept complete by inclusion of all investments in companies in the same group irrespective of the dates of investment. It is proposed to make it clear that in computing the limits laid down by section 372(2) and in considering any question of default in complying with the requirements of the section the total amount of investments on the relevant date including investments made prior to the 1st April, 1952, should be taken into account. (See para 150 of the Report.)

*Clause 139.*—The proposed amendments are merely clarificatory.

*Clause 140.*—The proposed sub-section (1A) is to ensure that the managing agent does not assume as of right the power of nominating the Chairman of the Board. New sub-section (6) is only to clarify the procedure.

*Clause 141.*—This amendment is consequential upon the proposed new section 197A (*vide* clause 59).

*Clause 142.*—In many places in the Act, references to both “managing agent” and “secretaries and treasurers” occur side by side. In such cases, references to “managing agent” cannot be

construed as references to "secretaries and treasurers"; hence it is proposed to make the position clear in the amendment proposed in section 379.

*Clause 143.*—The omission of the word "annual" is to remove an error.

*Clause 144.*—As recommended in para 152 of the Report, it is proposed to extend the prohibition on the appointment of a firm or body corporate as its manager also to private companies which are not subsidiaries of public companies.

*Clause 145.*—The amendment is consequential upon the amendment proposed in clause 148. (See para 152 of the Report.)

*Clause 146.*—The proposed amendment is to clarify that the remuneration of a manager whether in the form of a monthly salary or otherwise shall not exceed 5 per cent. of the net profits. (See para 152 of the Report.)

*Clause 147.*—This amendment seeks to make the appointment of a manager subject to Government approval in the same way as the appointment of a managing or whole-time director—(*vide* clause 95).

*Clause 148.*—It is proposed to make it clear that sections 386, 387 and 388 shall not apply to a private company which is not a subsidiary of a public company. (See para 152 of the Report.)

*Clause 149.*—In modification of the recommendation made in para 154 of the Report, it is proposed to put the matter beyond doubt by making it clear that the matter of proxies shall be governed by the rules made under section 643 by the Supreme Court.

*Clause 150.*—The amendment is of a drafting nature. Compare clause 66(c).

*Clause 151.*—The amendment proposed in section 398(1) (b) seeks to bring within the scope of the section a case when the change in the management of the company consists of a change in its managership. Compare proposed new section 197A (*vide* clause 59).

*Clause 152.*—The amendment is purely clarificatory.

*Clause 153.*—By one of the amendments it is intended to provide that the director nominated by the Government need not be a member of the company. This will facilitate the choice of independent persons as nominees of the Government. By another amendment the number of members required to join in the application to the

Government is reduced to 100 instead of 200 in order not to make it too difficult to present such applications. To prevent changes in the Board that may stultify the nomination of a director by Government, opportunity has been taken to provide that no change in the Board of directors of a company on which Government have appointed directors in exercise of the powers conferred by this section shall have effect unless approved by the Government.

*Clause 154.*—The amendment suggested in the earlier part of sub-section (1) of section 409 is necessary in view of the provisions of proposed new section 197A (*vide* clause 59) and that in the latter part of the sub-section clarifies the intention that the Government should have the power to take action under sub-section (1) of section 409 in anticipation of a change in the Board of directors, brought about by a change in the ownership of shares.

*Clause 155.*—The proposed amendment seeks to enable Government to dispose of frivolous applications received by it under sections 408 and 409 without referring them as a matter of routine to the Advisory Commission.

Further, final orders under section 409(2) are issued only after consultation with the Commission. The amendment would make it clear that it is not necessary to consult the Commission even before the issue of interim orders.

*Clause 156.*—The change embodied in clause (c) of sub-section (1) of section 417 gives effect to the recommendation in para 159 of the Report that where the company receiving monies or securities of employees is itself a Scheduled Bank, it may be allowed to retain the monies or securities with itself but in a special account.

It is also proposed to lay down a time limit for compliance with the requirements of the section.

*Clause 157.*—The redraft of sub-section (1) is based on the recommendations contained in para 159 of the Report and are designed to relieve difficulties experienced by companies generally in regard to collections of provident fund contributions, and payments from provident fund trust accounts, which must retain adequate cash balances to meet immediate current needs.

It is also proposed that when the company is itself a Scheduled Bank it may keep the provident fund monies with itself in a separate account. A time limit is proposed to be prescribed in relation to the provisions contained in sub-sections (1) and (4) as is proposed to be done in section 417 (*vide* clause 156).

*Clause 158.*—The amendment seeks to remove a drafting obscurity in clause (g) of sub-section (1) of section 426. (See para 160 of the Report.)

*Clause 159.*—As recommended by the Committee in para 161 of their Report, it is proposed to amend section 439 (5) so as to empower the Registrar of Companies to present a petition for winding up where the membership of the company falls below the statutory minimum and to present a petition to the court to the effect that it is just and equitable that the company should be wound up.

*Clause 160.*—In most cases, the winding up order is not drawn up and settled by the court within one month from the date of making of the order. The amendment seeks to exclude the time required for obtaining a copy of the order from the period prescribed by section 445(1).

*Clause 161.*—The amendments would have the effect of empowering the court as in exercise of insolvency jurisdiction to decide all claims made by or against any company and other questions whatsoever so that winding up proceedings might be expedited. (See para 164 of the Report.)

*Clause 162.*—It is proposed to make enabling provision for the Official Liquidator to share responsibilities with Deputy or Assistant Official Liquidators, if appointed. The proposed amendment would also enable the Government to appoint either the Deputy or Assistant Official Liquidator as the Official liquidator in a case in which the Official Liquidator may be personally interested. (See para 165 of the Report.)

*Clause 163.*—The amendment proposed gives effect to the recommendation in para 166 of the Report that the power of punishment should be vested in the winding-up court, so that defaults on the part of the officers of a company in submitting the statement of affairs could be suitably dealt with.

*Clause 164.*—The amendment proposed in section 455 gives effect to the recommendation of the Committee in para 167 of the Report, that the winding-up court should be given the power to extend the time for submission of the report by the Official Liquidator.

*Clause 165.*—The amendment suggested in sub-section (1) of section 456 seeks to remove a drafting defect.

The proposed new sub-sections (1A) and (1B) will enable the liquidator to obtain possession of books, papers, other properties and assets of the company with the assistance of the Chief Presidency

Magistrate or the District Magistrate within whose jurisdiction the books, papers, etc., may be found. (See para 168 of the Report.)

*Clause 166.*—This amendment gives effect to the recommendation in para 169 of the Report that the liquidator may be empowered to inspect the records and returns of the company on the files of the Registrar of Companies without payment of any fee.

*Clause 167.*—As explained in paras 170 and 207 of the Report, the change has been suggested to enable the Central Government to exercise control over Official Liquidators appointed under the old Act.

*Clause 168.*—Since the Committee of Inspection has hardly any important function to perform under the Act, it is proposed to make a provision in section 464 allowing the court to decide whether in the case of any particular company in liquidation there should be any such Committee or not. (See para 171 of the Report.)

*Clause 169.*—As pointed out in para 171 of the Report, the requirement of section 465 that the Committee of Inspection should meet at least once a month hardly serves any useful purpose. It is proposed to remove the requirement, so that the members of the Committee might be left free to meet whenever necessary.

*Clause 170.*—The amendments proposed in section 468 are designed to widen the scope of the section so that the court may also direct the employees (other than the officers) of a company to deliver to the liquidator such moneys or properties as may be in their custody or control. (See para 172 of the Report.)

*Clause 171.*—Section 477 empowers the court to summon persons suspected of having property or books or papers of a company, examine them on oath and require them to produce books and papers in their custody. It is proposed to widen the scope of the section on the lines of section 36 of the Presidency-towns Insolvency Act as recommended in para 174 of the Report, so that the court may also direct the persons who on examination may admit their indebtedness to the company to pay to the liquidator such amounts as the court may think fit.

*Clause 172.*—Following recommendation in paragraph 175 of the Report, it is proposed to empower the court to make an order dissolving the company where the liquidator finds it difficult to proceed with the winding up for want of funds and in the opinion of the court it is just and reasonable that an order for dissolution should be passed.

*Clause 173.*—The provision to have a copy of the latest audit report accompany the declaration of solvency is an obvious safe-guard.

*Clause 174.*—The amendment proposed gives effect to the recommendation in para 178 of the Report for properly streamlining the powers exercisable under section 512 with those in section 457.

*Clause 175.*—The amendments suitably enlarge the powers of the court to appoint, remove and fix remuneration of a liquidator and enable the Registrar to make any application in this behalf. (See para 176 of the Report.)

*Clause 176.*—Section 521 is to be omitted as it is repetitive and partly inconsistent with section 440 (2). (See para 162 of the Report).

*Clause 177.*—The changes proposed give effect to the recommendations contained in paras 180 and 181 of the Report in the same manner as in clause 175.

*Clause 178.*—The change proposed requiring a secured creditor to pay the expenses incurred by the liquidator for the preservation of the security before its realization by the secured creditor if the former, instead of relinquishing his security and proving his debts, proceeds to realise his security, is based on the provisions in section 47 of the Provincial Insolvency Act and Schedule II to the Presidency-towns Insolvency Act. (See para 182 of the Report).

*Clause 179.*—Section 530 (1) (b) speaks of wages in respect of services rendered to the company as a preferential charge but as the law stands at present retrenchment and lay-off compensation cannot be treated as part of wages. It is proposed to provide that compensation that may be due to workmen under the provisions of Chapter VA of the Industrial Disputes Act, 1947, should be included within the scope of the term "wages" for purposes of section 530 (1) (b).

*Clause 180.*—While sections 531 and 533 provide for cases of fraudulent preference, there is no provision in the Act in respect of voluntary transfers dealt with in section 55 of the Presidency-towns Insolvency Act and section 53 of the Provincial Insolvency Act. The proposed amendment supplies the omission. (See para 183 of the Report.)

*Clause 181.*—The amendment is purely clarificatory. (See para 184 of the Report.)

*Clause 182.*—The amendment proposed in section 537 is designed to make it clear that in the case of winding up by or subject to the supervision of the court, the provision in regard to avoidance of

certain attachments made, without the leave of the court, shall not apply to any proceedings instituted by the Government for the recovery of any tax or impost or any dues payable to it. (See para 185 of the Report.)

*Clause 183.*—The proposed amendment seeks to bring section 549 into accord with the scheme of sections 454 (6), 461 (2), 462 (4) and 551 (3) of the Act which empower the Supreme Court to make rules with regard to the inspection and grant of copies of records. (See para 187 of the Report.)

*Clause 184.*—The amendments seek to ensure better control over the work of liquidation.

*Clause 185.*—As recommended in para 189 of the Report provision is proposed to be made for better control over funds held by liquidator by requiring credit of such unclaimed amounts, etc., to the public account of India.

*Clause 186.*—The proposed change seeks to make it clear that if at the time of presentation of the petition for winding up to the court the members of an unregistered company are not more than seven in number, there is no jurisdiction under the Act to wind up such a company. (See para 190 of the Report.)

*Clause 187.*—This amendment is similar to that suggested in section 147 (1) (c). (*vide* clause 36). (See para 193 of the Report.)

*Clause 188.*—The changes suggested in section 610 are intended to raise the copying fee from six annas to one rupee for every hundred words and omit sub-section (4) which is not consistent with the provision of clause (ii) of the proviso to sub-section (1) of section 610. (See para 194 of the Report.)

*Clause 189.*—Provides for a higher fee imposed as a penalty on filing after prescribed time. (See para 195 of the Report.)

*Clause 190.*—Section 614 neither provides for any punishment for disobedience of the court's order nor contains any provision for compelling the performance of the duty of filing the returns, accounts or other documents even where a prosecution results in a penalty for breach of statutory duties. It is proposed to make suitable provisions for the purpose. (See para 196 of the Report.)

*Clause 191.*—This is consequential on the amendment suggested in section 211 (5) (iii). (See para 198 of the Report.)

*Clause 192.*—The amendments are largely clarificatory. (See para 199 of the Report.)



*Clause 193.*—The amendment is clarificatory.

*Clause 194.*—The proposed section 619A which is a redraft of section 639 seeks to put it in its proper place and avoid a constitutional difficulty about placing before Parliament report on Government Companies in which the Central Government hold no shares but only State Governments are concerned.

*Clause 195.*—The clause is self explanatory and contains special provisions about certain classes of companies like *Nidhis*. (See para 208 of the Report.)

*Clause 196.*—Notwithstanding the provisions of section 247 of the Code of Criminal Procedure, 1898, Magistrates in several States have been refusing to exercise the discretion in favour of the Registrar of Companies exempting him from personal attendance before the court. As the Registrar deposes from the record only and has no personal knowledge beyond the record, he stands on a different footing from other complainants, who mostly depose from personal knowledge. Further, it is not possible for the Registrar to remain present in each and every court within his extensive jurisdiction and for several dates in succession. It is, therefore, proposed to provide that the personal attendance of the complainant before the Court trying the offence shall not be necessary unless the court for reasons to be recorded in writing requires his personal attendance at the trial.

*Clause 197.*—This is consequential upon the new definition of "Court" proposed in section 2(11).

*Clause 198.*—In para 202 of the Report, the Committee has recommended that instead of depending on the State Government prosecutors the Central Government should appoint its own officers for the conduct of prosecutions arising out of the Act, and also assume powers to direct or authorise any person to prefer an appeal from an order of acquittal passed by a court of law. The proposed sections seek to give effect to the Committee's recommendations.

*Clause 199.*—This is consequential upon the new sections 624A and 624B as proposed in clause 198.

*Clause 200.*—The provision following the lines of section 46 of the Banking Companies Act seeks to provide a proper sanction for enforcing compliance with the statute when no specific penalty for contravention has already been prescribed. (See para 204 of the report.)

*Clause 201.*—The amendments are intended to make it clear that the scope of sub-section (2) includes not only proceedings in respect

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of civil claims but also any criminal proceedings against an officer of a company.

*Clause 202.*—The proposed section (637A) seeks to empower the Government to impose conditions while granting approval, etc., under any of the sections which require approval, etc., of the Government.

*Clause 203.*—This is consequential upon the new section (619A) proposed in clause 194.

*Clause 204.*—The amendment proposed in section 641(3) is a clarificatory one.

*Clause 205.*—The amendment is designed to empower the Central Government to frame rules under section 642(1) of the Act penalising the breaches thereof with fines.

*Clause 206.*—The changes suggested in section 643 mainly give effect to the recommendations in paras 21, 187 and 205 of the Report.

*Clause 207.*—The amendment suggested in section 647 is mainly based on the recommendation in para 207 of the Report.

*Clause 208.*—This seeks to omit section 650 which is now otiose.

*Clause 209.*—This is consequential on the redraft of section 106 (*vide* clause 26).

*Clause 210.*—See clause 4 and note thereon.

*Clause 211.*—The proposed amendments in Schedule VI are mainly based on the recommendations in the Annexure to the Report.

*Clause 212.*—This seeks to remove certain lacuna and lack of clarity in the provisions.

## FINANCIAL MEMORANDUM

In paragraph 202 of their Report, the Companies Act Amendment Committee have recommended that as the present practice of entrusting company cases to local public prosecutors, appointed by the State Governments is not conducive to the efficient or speedy conduct of prosecutions, the Central Government should provide the machinery for conducting prosecutions under the Act. Proposed new section 624A as inserted by clause 198 of the Bill seeks to implement this recommendation. A decision in this regard is without prejudice to the right to use the State prosecution machinery in bigger company law cases or where offences under the criminal law are involved and does not detract from the constitutional liability of the State in handling criminal cases.

2. The acceptance of the recommendation may not involve any fresh expenditure from the Consolidated Fund, as the prosecutions under the Act would continue to be conducted with the help of the same officers who are likely to be appointed shortly in pursuance of proposals earlier considered in the Department independently of the recommendation of the Amendment Committee. This Government have already decided to appoint a legal adviser in the scale of Rs. 800—40—1,000 at the headquarters besides one Company Prosecutor in the scale of Rs. 500—30—800 in each of the four regions, namely, Eastern, Western, Southern and Northern India. It is also proposed to create a cadre of Assistant Company Prosecutors in the scale of Rs. 250—500 and for the present to appoint two or three Assistant Company Prosecutors in different States where the volume of work may justify these appointments. The recurring expenditure likely to be incurred by the Department in this connection would be approximately Rs. 50,000 only per annum.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 2(h), 27(b), 205, 206 and 207 of the Bill contain provisions authorising the Central Government and the Supreme Court to make rules with respect to following matters :—

(a) withdrawal from, and payment into, the public account of India of moneys handled by the Official Liquidator [clauses 2(h) and 206] (rules to be made by the Central Government.);

(b) inspection of books and papers of a company in liquidation while in the custody of the Official Liquidator [clauses 2(h) and 206] (rules to be made by the Supreme Court.);

(c) quantum of a fee (within the ceiling of fifty rupees) payable along with appeal under section 111(3) (clause 27). (rules to be made by the Central Government.);

(d) penalty for contravention of any rules framed by the Central Government under section 642(1) subject to a ceiling of five hundred rupees and in case of a continuing offence, fifty rupees for every day during which such contravention continues (clause 205) (rules to be made by the Central Government.); and

(e) payment of monies received by the Official Liquidator under the Indian Companies Act, 1913, into the public account of India (clause 207) (rules to be made by the Central Government.)

These matters are matters of administrative detail and it is hardly possible to provide for them in the Act itself. The rule making powers contemplated in the aforesaid clauses are of a normal character.

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M. N. KAUL,  
*Secretary.*